

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----  
Capitol Records, Inc., a )  
Delaware corporation; Sony BMG ) File No. CV-06-1497  
Music Entertainment, a ) (MJD/RLE)  
Delaware general partnership; )  
Arista Records, LLC, a ) Duluth, Minnesota  
Delaware limited liability ) October 4, 2007  
company; Interscope Records, a ) 8:25 a.m.  
California general )  
partnership; Warner Bros. )  
Records, Inc., a Delaware )  
corporation; and UMG )  
Recordings, Inc., a Delaware )  
corporation, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Jammie Thomas, )  
 )  
Defendant. )  
 )  
-----

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

**(TRIAL - VOLUME III)**

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

	<u>PAGE</u>
CHARGE CONFERENCE	547
CLOSING ARGUMENT BY MR. TODER	568
CLOSING ARGUMENT BY MR. GABRIEL	581
JURY CHARGE	606
JURY QUESTION	633
VERDICT	635

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 N O T P R E S E N T )

4 THE COURT: Counsel, if we could turn to the  
5 second working draft of the instructions, I will quickly go  
6 through the changes that I have made if you have not had  
7 time to review them thoroughly.

8 On Jury Instruction No. 1, the last paragraph,  
9 I've put in, I hope, a paragraph that both sides can agree  
10 to. It reads as follows: "Do not allow sympathy or  
11 prejudice to influence you. The law demands of you a just  
12 verdict, unaffected by anything except the evidence, your  
13 common sense, and the law as I give it to you."

14 Any objections to that paragraph?

15 MR. GABRIEL: That's fine, Your Honor.

16 MR. TODER: That's fine.

17 THE COURT: All right. And then if we move to  
18 Jury Instruction No. 4, this is the burden of proof out of  
19 the Eighth Circuit, 3.04. Any further objections to this  
20 instruction?

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

22 MR. TODER: No, Your Honor.

23 THE COURT: Then Jury Instruction No. 5, the third  
24 paragraph, it reads as follows: "I am advised that reports  
25 about this trial are appearing in the newspapers, on

1 television and radio and on the Internet. The person who  
2 wrote or is reporting the story may not have listened to all  
3 of the testimony as you have, may be getting information  
4 from people who you will not see here in court under oath  
5 and subject to cross examination, may emphasize an  
6 unimportant point, or may simply be wrong. The case must be  
7 decided by you solely and exclusively on the evidence  
8 received here in court."

9 Any objections to that paragraph?

10 MR. GABRIEL: That's fine, Your Honor.

11 MR. TODER: No objection.

12 THE COURT: Then let's skip 14 for now because I  
13 think we're going to spend some time on that one.

14 Let's move to 23. It's a new one. I've added  
15 direct and circumstantial evidence and the definition of  
16 that. It reads as follows: "There are two types of  
17 evidence that are generally presented during a trial, direct  
18 evidence and circumstantial evidence. Direct evidence is  
19 the testimony of a person who asserts or claims to have  
20 actual knowledge of a fact, such as an eyewitness.  
21 Circumstantial evidence is proof of a chain of facts and  
22 circumstances indicating the existence of a fact. The law  
23 makes no distinction between the weight or value to be given  
24 to either direct or circumstantial evidence, nor is a  
25 greater degree of certainty required of circumstantial

1 evidence than of direct evidence. You should weigh all the  
2 evidence in the case."

3 Any objections to that?

4 MR. GABRIEL: No objection, Your Honor.

5 MR. TODER: No objection.

6 THE COURT: Then if you would turn to proposed  
7 Jury Instruction No. 24 dealing with knowledge, it reads as  
8 follows: "The knowledge that a person possesses at any  
9 given time may not ordinarily be proven directly because  
10 there is no way of directly scrutinizing the workings of the  
11 human mind. In determining the issue of what a person knew  
12 at a particular time, you may consider any statements made  
13 or acts done by that person and all other facts and  
14 circumstances received in evidence which may aid in your  
15 determination of that person's knowledge."

16 Any objections to that?

17 MR. GABRIEL: No objection, Your Honor.

18 MR. TODER: No objection.

19 THE COURT: Now let's go back to Jury  
20 Instruction 14.

21 MR. GABRIEL: Your Honor, if I may raise -- I know  
22 that may take some time. I have a couple of minor things,  
23 if I can, on the other instructions.

24 THE COURT: Certainly.

25 MR. GABRIEL: With sincere apologies to the Court,

1 I actually have three minor points that I didn't notice  
2 yesterday in the haste.

3 I recognize that the parties submitted a joint  
4 instruction, boilerplate, on what is evidence, the one that  
5 talks about arguments of counsel is not evidence, et cetera.  
6 It was stipulated Joint Instruction No. 2. I believe you  
7 actually gave that at the beginning of the case, and I think  
8 it should be given at the end of the case as well. The  
9 parties had stipulated to -- it's an Eighth Circuit  
10 instruction, Section 1.02. And I apologize for not noticing  
11 that yesterday.

12 THE COURT: Evidence limitations?

13 MR. GABRIEL: Yes, Your Honor.

14 THE COURT: We'll include that.

15 MR. GABRIEL: And then two really minor points.  
16 On Instruction No. 8, now looking at your Draft Working Copy  
17 No. 2 --

18 THE COURT: Yes.

19 MR. GABRIEL: -- on the second page of it, the  
20 very top, and it's the carryover sentence, it talks about  
21 the -- I am trying to find the beginning. It talks about  
22 our contentions and then it says essentially the plaintiffs  
23 contend that Ms. Thomas used Kazaa to download and to  
24 distribute. I would ask that the Court make that "and/or  
25 distribute" because I think it unnecessarily suggests we

1 have to prove both. I have a similar comment --

2 THE COURT: Any objections to that, Counsel?

3 MR. TODER: Yeah, Your Honor, because you can't  
4 distribute it if you haven't first downloaded it; and that  
5 would kind of tie into 14. I guess it wouldn't tie into 14,  
6 but since you can't have a distribution without a download,  
7 I would want to leave it.

8 MR. GABRIEL: That's actually not true.

9 THE COURT: That's not true because you can  
10 download something without distributing it.

11 MR. TODER: But you can't distribute something you  
12 don't have.

13 MR. GABRIEL: You could actually rip your own CD,  
14 for example, into Kazaa and then be distributing it.

15 MR. TODER: I stand corrected.

16 THE COURT: It will be "and/or."

17 MR. GABRIEL: And then really just basically the  
18 same comment, Your Honor, at Jury Instruction No. 12 and  
19 here in the second -- Your Honor, I think there's two ways  
20 to do this one. You could say "reproduce and/or distribute"  
21 or in the second sentence you could say "one who either  
22 reproduces or distributes." I'll leave that to the Court's  
23 discretion.

24 MR. TODER: Your Honor, can we revisit the  
25 previous one, please?



1 THE COURT: Yes.

2 MR. TODER: I still want to -- I still think it  
3 can't be -- it has to be "and" because if the only way you  
4 could distribute something is to take it off your CD, that's  
5 not part of this case; and there's a lot of innuendo that it  
6 is.

7 We talked about the CD's that were up there, the  
8 actual physical CD's. She was asked whether or not -- or  
9 the witness was asked whether or not they gave her  
10 permission for these CD's, the copyright notices. There's  
11 an innuendo starting to appear that maybe her ripping CD's  
12 had something to do with the allegations in this case.

13 But the allegations in this case are downloading  
14 songs from Kazaa and then distributing them. The actual  
15 logs of the screen shots, the text versions, they all were  
16 downloaded files. They had the name of the pirate and all  
17 that sort of thing.

18 So this case is not about her taking any kind of a  
19 CD, putting it on her machine, and then turning it out and  
20 sending it to someone else. So you have to have a download  
21 and a distribution.

22 (Pause.)

23 MR. GABRIEL: Your Honor, I know you're reading.  
24 I don't mean to interrupt. I do want to indicate our  
25 allegation from the beginning of the case in the Complaint

1 is "and/or" and our position is under the copyright law we  
2 have to prove one or the other, not both.

3 Mr. Toder saying we don't make the allegations --  
4 we asked questions about were you authorized because that's  
5 an element of what we have to prove. She had no  
6 authorization to either copy or distribute. That's what  
7 those questions went to.

8 You can distribute without downloading, I think  
9 that's a correct statement of the law, and the Complaint  
10 from day one says "and/or."

11 THE COURT: I'm going to keep it "and/or."

12 MR. TODER: Okay.

13 THE COURT: Let's go to 12. It will be "either  
14 one who produces or distributes." Is that agreeable?

15 MR. GABRIEL: I'm sorry.

16 THE COURT: On 12 --

17 MR. GABRIEL: Did you say -- where did you put the  
18 word "either"?

19 THE COURT: At the beginning of the second  
20 sentence, "either one who reproduces or distributes."

21 MR. GABRIEL: May I suggest, Your Honor, "one who  
22 either reproduces." Just grammatically I think that's  
23 easier to read.

24 THE COURT: "One who either."

25 MR. GABRIEL: Thank you, sir.

1 THE COURT: Any other minor corrections before we  
2 get to 14 for defense?

3 MR. TODER: No, Your Honor.

4 THE COURT: Let's turn to 14. Counsel, you cited  
5 Perfect 10 vs. Amazon.com for the proposition that your  
6 instruction should be given. Would you help the Court out  
7 in looking at Perfect 10 vs. Amazon. My reading of it, it  
8 doesn't apply.

9 MR. GABRIEL: It's in Note 14, Your Honor, and it  
10 really just follows the Napster Ninth Circuit case that we  
11 cited. We cited about ten cases yesterday.

12 THE COURT: Right.

13 MR. GABRIEL: And I think really the point that  
14 it's making, as I recall it -- and I apologize I don't have  
15 it with me -- basically is the point I made yesterday, that  
16 if there's an index and if there's something behind the  
17 index, that would be a distribution; and if there's nothing  
18 behind the index, if it's just a list of files -- a list of  
19 names, excuse me, just a list of names with nothing behind  
20 it, that would not be.

21 THE COURT: Dealing with the -- are there any --

22 MR. GABRIEL: Your Honor, I'm sorry. My client is  
23 whispering at me here. May I have just a second?

24 THE COURT: Go ahead.

25 (Pause.)

1 MR. GABRIEL: Your Honor, if I may, I can add  
2 something my client just reminded me of. I think I advised  
3 the Court yesterday and we cited the Napster -- the first  
4 Napster decision in the Ninth Circuit where the court -- and  
5 actually the citation we gave you quotes it, "Napster users  
6 who upload file names to the search index for others to copy  
7 violate plaintiffs' distribution rights."

8 After remand we talked a little bit yesterday  
9 about the Napster district court case and the Napster  
10 district court case seemed to contradict the Ninth Circuit,  
11 which would be somewhat unusual, I suppose, although, as I  
12 said yesterday, the Napster district court case said the  
13 proposition I just said, if it's only an index, that's not  
14 enough.

15 The Perfect 10 vs. Amazon case actually reaffirms  
16 the Napster decision and clarifies. So that's kind of the  
17 stream and that's what it's talking about.

18 THE COURT: Do you know of any adverse decisions,  
19 district court decisions?

20 MR. GABRIEL: Are you asking me that, Your Honor?

21 THE COURT: Yes.

22 MR. GABRIEL: Actually, I'm not aware of any court  
23 opinions that are contrary to the principles that I've said.

24 THE COURT: What about out of the Eastern District  
25 of New York, UMG Recordings, Incorporated vs. Marie Lindor,

1 L-i-n-d-o-r, Civil Action 05-09 -- 1095, by Judge Trager?

2 MR. GABRIEL: In that case Judge Trager -- well,  
3 I'm trying to remember what decision you're referring to. I  
4 am the lead lawyer in that case, Your Honor. The court  
5 hasn't decided that issue in that case.

6 THE COURT: Well, I printed out the order and it  
7 says -- there's an objection to the report and  
8 recommendation to him or to her. I don't know.

9 MR. GABRIEL: Judge Trager is a him. The only --  
10 there's an objection on a discovery issue in that case.

11 THE COURT: Unless something is floating out in  
12 cyberspace that you don't know about, I'm sure you received  
13 a copy of this. This was issued on December 22, 2006. It  
14 talks about --

15 MR. GABRIEL: May I approach, Your Honor? If I  
16 could see that, I probably could help the Court. That case  
17 has been going on a while and it's fairly litigious.  
18 There's a lot of pleadings there. I apologize. I'm not  
19 sure which one you're talking about.

20 THE COURT: Just hold on for a second.

21 MR. GABRIEL: Sure.

22 (Pause.)

23 THE COURT: It says here, "At trial the plaintiffs  
24 will have the burden of proving by a preponderance of the  
25 evidence that defendant did indeed infringe plaintiffs'

1 copyrights by convincing the fact-finder, based on the  
2 evidence plaintiffs have gathered, that the defendant  
3 actually shared sound files belonging to plaintiffs."

4 MR. GABRIEL: Your Honor, I don't believe that --  
5 now I vaguely recall that. The issue with that was, Your  
6 Honor, related to -- it was a motion in limine, as I recall,  
7 to exclude documents that were something that's similar to  
8 Exhibit 2 in this case. Those are ones, the Court will  
9 recall, where MediaSentry/SafeNet starts the download and  
10 doesn't complete the download.

11 The defendant in that case moved in limine to  
12 exclude those because they had only started the download.  
13 The judge denied that motion in limine and basically said we  
14 have to prove distribution at trial.

15 The issue that we're raising here was not briefed  
16 in that -- on that issue. The focus really was, hey, you  
17 don't have the complete recording, therefore, you know,  
18 that's not enough. And the court denied that motion and  
19 said we have the opportunity to rely on any evidence that  
20 that was the recording and that it was distributed. But  
21 that issue of making available was not briefed in that case  
22 at all.

23 MR. TODER: May I comment on that, Your Honor?

24 THE COURT: You may.

25 MR. TODER: The sentence that you just read, "At

1 trial plaintiffs will have the burden of proving by a  
2 preponderance of the evidence," et cetera, et cetera, "that  
3 defendant actually shared, actually shared sound files..."  
4 I'm reading from the report and recommendation in that very  
5 case, UMG vs. Lindor.

6 And in that very same sentence -- I mean that very  
7 same paragraph it begins by a U.S. Supreme Court quote,  
8 which says, "It is well settled that in order to establish  
9 infringement two elements must be proven, one, ownership of  
10 a valid copyright and, two, copying of constituent elements  
11 of the work that are original," citing Feist Publications,  
12 Inc. v. Rural Telephone Service, 499 U.S. 340.

13 And then further in that paragraph we come exactly  
14 to the sentence that you just read, which suggests that the  
15 motion in limine was not set up to deal with this particular  
16 issue, it was set up to do something else, but as a general  
17 principle of law that would guide the court in resolving  
18 that matter, this is the position of the court, which is  
19 that you have to have something more than merely offering  
20 something.

21 And if you look at these instructions, the two  
22 versions of 14, one, "the mere act of making copyrighted  
23 sound recordings," et cetera, "without license...does not  
24 violate," that makes sense. Because if you make something  
25 available, there's no evil yet, there's no evil yet.

1           A person could actually make something available  
2           that could be ultimately used under the fair use doctrine.  
3           It is when you actually have an act, you have a transfer or  
4           a downloading that you can see that you violated the  
5           copyright statute.

6           THE COURT: Well, let's go to -- while I've got  
7           you up there, let me be the devil's advocate on this. The  
8           Church of Jesus Christ of Latter-Day Saints, cited at  
9           118 F.3d 199, it says, "Moreover, even if we were to accept  
10          the Church's arguments, it would not change the outcome.  
11          If, as the Church says, actual use by the public must be  
12          shown to establish distribution, no one can expect a  
13          copyright holder to prove particular instances of use by the  
14          public when the proof is impossible to produce because the  
15          infringing library has not kept records of public use. To  
16          reiterate, a copyright holder should not be prejudiced in  
17          the same manner, nor should an infringer benefit from its  
18          failure to keep records. In this case the Church's library  
19          did not record instances of public use of the Hotaling  
20          microfiche."

21          MR. TODER: I'm not familiar enough with that case  
22          to distinguish it.

23          THE COURT: Well, it's saying that by putting  
24          something up for distribution is distribution.

25          MR. TODER: That would sort of emasculate, then,



1 the plain language of the copyright statute. I think the  
2 problem we have is that we have different circuits in  
3 different cases looking at their specific situations and we  
4 still don't have -- we have variations in this law.

5 What you said regarding -- or what you quoted  
6 regarding Church, again, I can't distinguish it. It  
7 probably makes sense there, but in this case here you  
8 wouldn't have that problem. You have people like  
9 MediaSentry out harvesting these things, so you have a  
10 distribution. In this modern age where there are -- there  
11 is evidence of how files move back and forth, you can prove  
12 these things, you don't have those kinds of problems.

13 THE COURT: Anything else you want to say --

14 MR. TODER: No.

15 THE COURT: -- on 14?

16 MR. TODER: No.

17 THE COURT: Anything else on 14?

18 MR. GABRIEL: Your Honor, I would just say in  
19 Feist, as the Court is well aware, it cites the elements of  
20 what we need to prove, which is consistent with -- you have  
21 to prove ownership and a violation of exclusive rights.  
22 That's all the context that that decision is talking about.  
23 It didn't address the issue -- I lived that one. Mr. Toder  
24 is right, it just wasn't an issue in that case.

25 The Court is exactly right about the Hotaling case

1 and all the cases that it cited. Napster in the Ninth  
2 Circuit, all the various circuit courts that I cited to you  
3 yesterday follow that in this context because there are no  
4 records of who on the other end. In file sharing it is  
5 nefarious in and of itself for all of those reasons.

6 And Mr. Toder references the Copyright Act. It  
7 says "distribution to the public." That's what it says.  
8 This is a distribution to the public. That's what Hotaling  
9 said. It's in there, it's open for anyone, that's  
10 distribution to the public. And it would be impossible and  
11 there are no records to say who on the other end, out of the  
12 millions of people, had it. So I believe Hotaling is right.

13 We cited nine or ten cases supporting our position  
14 and you haven't heard one on the other side.

15 MR. TODER: Other than the Lindor case.

16 THE COURT: Are there any other cases out there  
17 that I should know about?

18 MR. GABRIEL: None that I'm aware of, Your Honor.  
19 I mean, I can say this. The cases where this has come up in  
20 other districts, courts have either supported our position  
21 or at least come up in motions to dismiss very early will  
22 say, you know, that may well be and I don't have to address  
23 it now on a motion to dismiss. But there's no case that I'm  
24 aware of that comes out the other way.

25 MR. TODER: I'm unaware of any.

1 (Pause.)

2 THE COURT: All right. The Court will give the  
3 following instruction: "The act of making copyrighted sound  
4 recordings available for electronic distribution on a  
5 peer-to-peer network without license from the copyright  
6 owners violates the copyright owners' exclusive right of  
7 distribution, regardless of whether actual distribution has  
8 been shown."

9 Let's move to the verdict form. Any objections to  
10 the verdict form?

11 MR. GABRIEL: Your Honor, may we have just one  
12 moment, please? We actually got through the instructions,  
13 but not the verdict form.

14 (Pause.)

15 MR. GABRIEL: Generally, Your Honor, I have a  
16 minor grammatic request. In Question 1, just the  
17 phraseology at the end, "Did Plaintiff Capitol Records own  
18 the copyright to one or more of the sound recordings it  
19 claims defendant subjected to an act of infringement," I  
20 would suggest "defendant infringed" would be simpler. And,  
21 of course, that would apply to all of the like questions.

22 THE COURT: Any objection?

23 MR. TODER: I'm just trying to see what the  
24 corresponding instruction is, whether it was "an act of  
25 infringement" or "infringed."

1 MR. GABRIEL: Brian, I think if you look at 10 and  
2 11.

3 MR. TODER: I have no objection.

4 THE COURT: We'll make that change. That will be  
5 on all the questions. It will be 1, 6, 11, 16, 21, and 26.  
6 Any other changes?

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

8 MR. TODER: No, Your Honor.

9 THE COURT: Okay. Why don't we get situated. The  
10 jury will be coming in at 9:30. We'll make copies. The  
11 jury gets written copies of the instructions. We'll get a  
12 new set to you that has the corrections for your final  
13 arguments and we'll go from there.

14 Anything else?

15 MR. GABRIEL: Yeah, I just have two  
16 housekeeping -- excuse me, Your Honor.

17 (Pause.)

18 MR. GABRIEL: Sorry, Your Honor. I guess really  
19 two housekeeping matters, if I may.

20 Your Honor, Exhibit 5, as the Court will recall,  
21 are the original legitimate CD's of the recordings at issue.  
22 Right now in the exhibit book there are color photocopies of  
23 the CD's. We actually, obviously, have admitted the actual  
24 CD's.

25 So just as a housekeeping matter, would the Court

1 like us to remove the photocopies from the book and just  
2 give the Court the CD's as the exhibit or have both copies  
3 and the CD's?

4 THE COURT: Counsel.

5 MR. TODER: We take no position.

6 THE COURT: Just take out the photocopies. The  
7 CD's will go in.

8 MR. GABRIEL: That will be fine. We'll do that.

9 And then the second thing relates to the motion in  
10 limine briefing that we had before the case started.

11 Mr. Toder, as the Court knows, has raised issues about or  
12 asked questions about are you aware the plaintiffs sued dead  
13 people and questions like that. That was addressed in the  
14 motions in limine brief before and we took the position that  
15 it would be improper and prejudicial.

16 I renew that, that there is no evidence in the  
17 case of any such -- other than questions from Mr. Toder,  
18 there's no evidence in the case regarding any of that and  
19 Mr. Toder correctly said yesterday other cases are  
20 irrelevant in his motion to exclude Mr. Sherman. So I guess  
21 what's good for the goose is good for the gander. We would  
22 renew our motion in limine on that.

23 MR. TODER: Your Honor, I have no intention of  
24 raising any of that type of stuff in my closing.

25 THE COURT: Anything else?

1 MR. GABRIEL: Just one moment.

2 (Pause.)

3 MR. GABRIEL: Nothing further, Your Honor. Thank  
4 you very much.

5 THE COURT: We'll recess until 9:30.

6 (Recess taken at 9:00 a.m.)

7 \* \* \* \* \*

8 (9:15 a.m.)

9 **IN OPEN COURT**

10 **(JURY NOT PRESENT)**

11 THE COURT: We're out of the hearing of the jury.  
12 Sir, would you step to the podium.

13 MR. BANGEMAN: Yes, sir.

14 THE COURT: What is your name?

15 MR. BANGEMAN: My name is Eric Bangeman.

16 THE COURT: And it's come to my attention that you  
17 have talked to two of my jurors, one yesterday and one this  
18 morning, that you went into the jury room.

19 MR. BANGEMAN: No, sir, I did not go into the jury  
20 room. I ran into him at the water fountain around the  
21 corner from the jury room. I said good morning to him and I  
22 asked him his name because I hope to talk to him after the  
23 trial. This is the first time I've ever covered a trial or  
24 ever been in a courtroom, so --

25 THE COURT: Here are the rules. No one is to have

1 contact with the jurors, talk to the jurors. It will be  
2 reported to me. Any type of influence on a juror will land  
3 somebody in custody.

4 MR. BANGEMAN: Yes, Your Honor, I understand that.

5 THE COURT: And you understand that until this  
6 case is over, you are not to have any contact or talk to any  
7 of the jurors; do you understand that?

8 MR. BANGEMAN: Yes, Your Honor, I understand that.  
9 And I apologize.

10 THE COURT: Okay.

11 MR. GABRIEL: Your Honor, could we just ask -- I'm  
12 not sure we heard the contact with the juror. Just for the  
13 record, what was the contact? I think you said two jurors.

14 THE COURT: My understanding the contact was  
15 outside.

16 MR. BANGEMAN: Yes, exchanging pleasantries on the  
17 way out of the courthouse. They were sitting on the steps  
18 having a smoke and I was heading back to the hotel.

19 THE COURT: And then this morning --

20 MR. BANGEMAN: This morning saying good morning  
21 and, as I said before, asking his name outside the jury  
22 room. I was just walking around the corner to the drinking  
23 fountain over towards the men's room and happened to bump  
24 into him.

25 MR. GABRIEL: Your Honor, may I just ask

1 Mr. Bangeman if he discussed anything of substance with  
2 these people. I think we should have that on the record.

3 MR. BANGEMAN: No, Your Honor, I did not discuss  
4 anything pertaining to the case at all with any of -- at any  
5 time with any of the jurors.

6 THE COURT: Anything else, Counsel?

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

8 (Recess taken at 9:20 a.m.)

9 \* \* \* \* \*

10 (9:35 a.m.)

11 **IN OPEN COURT**

12 **(JURY NOT PRESENT)**

13 THE COURT: Counsel, what is the problem?

14 MR. GABRIEL: It's very minor, Your Honor. We  
15 very much appreciate your adding the instruction about what  
16 is evidence and I noticed one of the things that are not  
17 evidence, the phraseology "statements, arguments, questions,  
18 and comments by lawyers are not evidence."

19 As everyone knows, we have had several lawyers on  
20 the witness stand. So we would ask that you just add the  
21 word "trial lawyers," the word "trial" before the word  
22 "lawyers." And I think Mr. Toder has no objection to that.

23 MR. TODER: I don't.

24 THE COURT: I will say "by the lawyers trying this  
25 case."



1 MR. GABRIEL: That's fine, Your Honor. Thank you.

2 THE COURT: Anything else before we bring out the  
3 jury?

4 MR. GABRIEL: No, Your Honor. Thank you very  
5 much.

6 MR. TODER: Nothing from the defendant.

7 **IN OPEN COURT**

8 **(JURY PRESENT)**

9 THE COURT: You may begin your final argument.

10 MR. TODER: Thank you, Your Honor. May it please  
11 the Court, Counsel, Members of the Jury.

12 When I first addressed you on our opening  
13 statement I told you that we have a very tough row to hoe  
14 because plaintiffs have evidence that someone using the name  
15 tereastarr and someone who used her IP address account  
16 published songs on the Internet, and that's their case.

17 There are certainly alternative explanations,  
18 because my client didn't do that, but we don't know what  
19 those alternative explanations are. I mean, how can we?  
20 You've heard things like spoofing, hijacking, drones,  
21 crackers.

22 You've heard all those things, but we can't  
23 embrace some other explanation and try to convince you  
24 that's what happened instead of what they said because we  
25 don't know what happened. All we know is that Jammie Thomas

1 didn't do this. It wasn't her computer. Somebody used her  
2 name. Somebody used her IP address.

3 Now, you would think that this is an impossible  
4 situation for us or any defendant similarly situated, but  
5 it's not impossible. There is a level playing field  
6 because, as the Court will instruct you, they have the  
7 burden -- it's a very important word in this whole  
8 proceeding -- they have the burden of proving that Jammie  
9 Thomas, a human being, got on her keyboard and sent out  
10 these things and called herself tereastarr and used her IP  
11 address.

12 The only evidence that plaintiffs presented -- and  
13 I'm not going to go through all the evidence you saw in the  
14 case. You saw it. But for starters, you had MediaSentry,  
15 you had Mark Weaver. He talked about the methodology that  
16 was used. And he was a stand-up guy. He never once, he  
17 never once said that they had evidence that Jammie Thomas  
18 was the one that did this.

19 What their evidence shows, simply, is that  
20 somebody named tereastarr was on Kazaa and MediaSentry's  
21 evidence showed that someone using the IP address that  
22 belonged to the account of Jammie Thomas was used.

23 And then you heard from David Edgar from Charter  
24 Communications and he testified that the IP address  
25 identified an account. And you will see that letter amongst

1 the documents that you look at, a letter from Charter  
2 Communications where they talk about the IP address as being  
3 the IP address of an account held by Jammie Thomas.

4 He didn't testify that from the MAC address they  
5 could identify the specific computer. You will see one  
6 exhibit where you see a bunch of numbers on a column on one  
7 side that has MAC addresses. These are numbers that are  
8 simply assigned.

9 You can't go out and see what computer is being  
10 used. You can see what Internet service provider is being  
11 used. You can see what IP address is being used, unless, of  
12 course, it's hijacked, unless, of course, it's spoofed.

13 And then you had Dr. Jacobson. Dr. Jacobson is  
14 plaintiffs' expert, and I will underline plaintiffs' expert.  
15 He's not a neutral witness. He doesn't work for the Court.  
16 He's a hired gun. What makes him different than any other  
17 witness that you have seen is that he is legally allowed to  
18 give an opinion.

19 And I think that you saw that he was making things  
20 up as he went along. For example, he gave two reports. The  
21 second report you have in evidence and one of the things he  
22 added in the second report, the one you have, is he decided  
23 to give an opinion to ultimately discredit what Ms. Thomas  
24 said at her deposition.

25 He said that all these songs that were legally on

1 her hard drive, the WMA files, he said all those songs, that  
2 they came on there so fast that they had to have been  
3 downloaded from another hard drive. Maybe she had an  
4 external hard drive plugged in or something. But they  
5 couldn't have been done by the way she said it was done,  
6 putting in a CD and then putting it on the computer, because  
7 he said it was too fast, you know, this 15, 20 seconds.

8 Well, we demonstrated to your satisfaction, I  
9 hope, that he was wrong. He was absolutely wrong. So what  
10 did he do? He decided to backpedal. He said that, well,  
11 this is a newer version of Windows. He said it was -- now  
12 it's Windows 12. They make upgrades sometimes. If you are  
13 familiar with computers, you've seen how upgrades occur.  
14 They ask you if you want to upgrade and it happens.

15 But he wasn't able to testify that the newer  
16 version of the Windows Media program was any faster. I  
17 asked him, How much faster? He didn't have a clue, but he  
18 was still willing to give the opinion that it was faster,  
19 but he didn't know if it was really faster.

20 And then he tried to backpedal again by saying,  
21 well, it probably went fast here in this demonstration  
22 compared to what we got off of Exhibit B to his report, it  
23 went faster here because she's not plugged into the Internet  
24 and, you know, metadata would be loaded.

25 First of all, on cross examination he didn't know

1 whether or not Jammie Thomas's computer was hooked up to the  
2 Internet to get metadata and he didn't know whether or not  
3 the CD that I handed him, whether that metadata  
4 automatically gets transferred. He was backpedaling.

5 And by the way, before we get off the subject of  
6 these CD's, all those CD's that Jammie Thomas purchased --  
7 you saw that she purchased them. You are going to see the  
8 Best Buy -- you've seen the Best Buy receipts. Jammie  
9 Thomas is one of the best customers that record companies  
10 ever had around here. I mean, she bought hundreds of these  
11 things and she paid dearly for them.

12 She bought all kinds of CD's before February 21,  
13 2005. She bought all kinds of CD's after February 21, 2005.  
14 There are no allegations in this case at all that she took  
15 CD's and then put them on her machine and then sent them  
16 out.

17 You will remember that the text logs of the screen  
18 shots show that these were all songs that had been pirated  
19 from someone else. Remember they had the names of the  
20 people who were all proud of themselves for being the first  
21 ones to put this stuff up. That tereastarr screen that you  
22 saw wasn't composed of any kind of CD that Jammie Thomas  
23 bought that was on her machine.

24 So, back to Dr. Jacobson. He said he's making  
25 \$200 an hour. I asked him how much money he had been paid

1 so far and he told us. I asked him -- or on direct  
2 examination he was asked, Well, Dr. Jacobson, how many hours  
3 did you work on this? And he said, Five or six hours. In  
4 other words, he's trying to convince you that he's not  
5 getting a lot of money to testify in this case, he's not  
6 really a hired gun, he only worked five or six hours in this  
7 case.

8 And then back on my cross examination of  
9 Dr. Jacobson, on page 6 of his report, which you're going to  
10 get, I started reading off all the things that he said he  
11 looked at and did on this case, all the depositions that he  
12 looked at, all the -- he did a forensic examination of the  
13 computer, all this stuff. And then I said, You really only  
14 did that in five or six hours? Of course he was speechless.  
15 He's in a bad situation.

16 He was in a bad situation because if he really did  
17 only work five or six hours on this case, he couldn't give  
18 this case the time and attention that it deserves; and if he  
19 did work more than that, he couldn't change his testimony.

20 Dr. Jacobson, he admitted that he's getting some  
21 notoriety from this case across the country and that helps  
22 his business Palsaides, which deals with Internet security  
23 of hijackers and -- crackers and hijackers. So he has  
24 incentive to testify, he has a financial incentive to  
25 testify the way that he did.

1           He also said that he never came upon anyone else  
2           named tereastarr and then he admitted that, yeah, there's  
3           about 2 million people on the Internet at any given time and  
4           maybe he looked at less than half a percent.

5           He also said that he looked at over 200 -- he's  
6           authored over 200 reports for the recording company and then  
7           he said he never subsequently went back, never went -- he  
8           never did any follow-up to see whether or not he was right  
9           or not. Do you remember when I asked him about these  
10          different people?

11          The reason I say this all about Dr. Jacobson is  
12          because you are going to get an instruction from Judge Davis  
13          that says this. "After making your own judgment, you will  
14          give the testimony of each witness such weight, if any, that  
15          you think it deserves. In short, you may accept or reject  
16          the testimony of any witness, in whole or in part." And I  
17          would respectfully ask you to reject all of the testimony  
18          that you heard from Dr. Jacobson.

19          And, again, the best the plaintiffs can do is show  
20          that somebody named tereastarr had somehow used -- hijacked,  
21          used my client's IP address. So the big question is, well,  
22          could it have been Jammie Thomas, could it have been her?

23          The plaintiffs are relying on circumstantial  
24          evidence to show that it was her. They're talking about the  
25          fact that the hard drive was replaced. But circumstantial

1 evidence can work both ways. Let's just take a look at  
2 that. Could it have been Jammie Thomas? What is the  
3 circumstantial evidence?

4 Her boyfriend, Kevin Havemeier, he didn't think  
5 that she did this, he didn't see any evidence of her doing  
6 this. They tried to impeach him. They mentioned that  
7 Jammie Thomas made a Valentine's CD for him. This is a red  
8 herring. It was done legally. It did not involve Kazaa.  
9 So Kevin Havemeier does nothing but support the fact that  
10 this wasn't Jammie Thomas.

11 Ryyan Maki, remember Ryyan Maki? He is the guy  
12 from Best Buy. He testified that she brought her computer  
13 in for a repair. She didn't bring the computer in to  
14 replace the hard drive. It's not a big deal, you can go out  
15 and buy a hard drive and replace it yourself. She brought  
16 this in for a repair and it was Best Buy's decision to  
17 repair this hard -- or to replace the hard drive. It wasn't  
18 hers.

19 And by the way, since we're talking about Best  
20 Buy, again, look at the Best Buy exhibits in this case, look  
21 at what a great customer she is. She is somebody who buys,  
22 she is somebody who buys her CD's, and that is important  
23 circumstantial evidence.

24 Now, all of those CD's that she bought at Best Buy  
25 she could have -- she didn't have to buy them from Best Buy,



1 did she? She could have -- she knew about Kazaa. She could  
2 have gone on Kazaa and got all those songs for free. We  
3 know that those songs are out there because, as was  
4 testified, pirates, you know, they can't get to the Internet  
5 fast enough to throw these things out. But she didn't do  
6 that. She bought them.

7 Let's look at Jammie Thomas's own testimony.  
8 Again, she testified that she brought the computer in to be  
9 repaired, not to have the hard drive replaced, and she did  
10 this on March 6, 2005. Keep these dates in mind because  
11 they're so important. Remember, the allegations are that  
12 there was this downloading on February 21, 2005.

13 Jammie Thomas got no notice of anything. They  
14 said -- one of the witnesses said that when you -- with this  
15 handshake, MediaSentry, when you do this handshake, that  
16 they send out an e-mail to confirm and back again.  
17 Remember, the e-mail went to tereastarr@kazaa. Jammie  
18 Thomas's e-mail is tereastarr@charter. She wouldn't have  
19 got this e-mail.

20 So, in other words, she would have had no notice  
21 whatsoever of any kind of a lawsuit that was out there being  
22 formulated. No one was plotting against her that she was  
23 aware of.

24 She simply got her computer repaired on March 6th,  
25 where they replaced the hard drive, and it wasn't until

1 April 22, 2005 when she first got a notice. She first got a  
2 notice on April 22nd and that's the letter from Charter.

3 So this is not a case where she finds out that  
4 someone is after her or something has been done wrong, let's  
5 go do something with the hard drive. That's clearly not the  
6 case at all.

7 It wasn't until August 19, 2005 that she finally  
8 gets a letter from lawyers for the plaintiffs saying we  
9 think you've done something wrong, get ahold of us. And  
10 they also, by the way, made a big point of that letter said  
11 there's an obligation to preserve evidence. There's no  
12 evidence in this case that Ms. Thomas did anything other  
13 than preserve evidence after she got that letter on  
14 August 19, 2005.

15 And, of course, the circumstantial evidence that  
16 plaintiffs are really relying on is that when she gave her  
17 computer to her lawyer, she tells him, me, us, that it  
18 was -- that nothing has been replaced, it was done in 2004,  
19 not 2005. And she said the same thing in her deposition.  
20 So was she lying or was she mistaken? This is a big deal.

21 It says right on the hard drive, it says right on  
22 the hard drive manufactured in January of 2005. No one  
23 would try to, with a straight face, try to conceal a fact  
24 that material if she handed you a hard drive that said on  
25 there manufactured in January of 2005. She was mistaken.

1           And her deposition testimony, it was consistently  
2 a year off. She said she bought it in 2003. Well, she  
3 bought it in 2004. And then she was asked about that.  
4 Everything was a year off. She was mistaken. She was  
5 mistaken. She wasn't lying about that hard drive.

6           And this is what plaintiffs are trying to convince  
7 you, is that the fact that the hard drive was replaced, that  
8 this must prove that whoever used tereastarr out there must  
9 really be Jammie Thomas.

10           And, again, as I said to you in opening statement,  
11 would anyone who was actually going to do something like  
12 that use the name that everybody knows them by? She could  
13 have used any name in the world if she actually did this,  
14 but she didn't do this. And if somebody -- think about  
15 this. If somebody is going to hijack your IP address,  
16 wouldn't they use the same name? Wouldn't they? It's  
17 likely. She wasn't lying about that. She made a mistake.

18           And then we have this evidence about the MAC  
19 address. The MAC address was assigned to Jammie Thomas's  
20 modem. And Dr. Jacobson, the one thing he did admit on  
21 cross examination, that a MAC address can be spoofed and an  
22 IP address can be spoofed.

23           And, again, we can't prove spoofing, we can't  
24 prove any other kind of evil, but, again, we don't have to  
25 because plaintiffs have the burden of proof in this case to

1 prove that this human being, Jammie Thomas, was at the  
2 keyboard and she's the one who went on Kazaa and she's the  
3 one who did all these things. The plaintiffs on this record  
4 have not met their burden of proof.

5 Let me show you something. When you go back to  
6 deliberate, you're going to be given a document that looks  
7 like this. It's called a special verdict form. And this is  
8 where you are going to answer some questions.

9 The first question you're going to be asked for  
10 each plaintiff, it will say, "Did Capitol" -- "Plaintiff  
11 Capitol Records own the copyright to one or more of the  
12 sound recordings it claims defendant infringed?" And it's  
13 the same kind of question you're going to get for each  
14 plaintiff.

15 Then you are going to have to decide right away,  
16 before you get down to any allegations of infringement, as  
17 to whether or not these people actually did own -- did they  
18 really prove that they owned these titles.

19 The first witness, the witness for UMG, the  
20 witness for Sony, they both signed declarations. Remember  
21 the declarations that I presented to them? They lied in  
22 their declarations. These were under oath. They said that  
23 plaintiffs actually observed this particular defendant. You  
24 can consider that.

25 Do you remember the gentleman from Capitol Records

1 who wasn't really sure about the corporate structure of the  
2 parent and who owned what? It's something you have to think  
3 about, did they meet their burden of proof on who owns these  
4 things.

5 But more importantly, each of these questions --  
6 each of these plaintiffs will have a second question. "If  
7 you answered 'yes,'" in other words, if you decided they  
8 really did own the titles, "did the defendant commit an act  
9 of infringement with respect to one or more of these  
10 copyrighted song recordings owned by Plaintiff Capitol  
11 Records?" And the Judge is going to instruct you as to what  
12 an act of infringement really is.

13 And we submit that in every one of these cases  
14 when you go down the special verdict form, all these  
15 questions that start with, "If you answered 'yes' to the  
16 previous question, did defendant commit an act of  
17 infringement with respect to one or more copyrighted song  
18 recordings owned by" each plaintiff, the answer should be no  
19 for every single one of those because they have not met  
20 their burden, the thing that keeps this a level playing  
21 field, for each one of those plaintiffs.

22 The last thing I want to say to you is you don't  
23 have to award the record companies any money. You don't  
24 have to do that because they didn't earn it in this trial.  
25 They didn't earn it because they did not meet their burden

1 of proof.

2 More importantly, Jammie Thomas did not do this.  
3 Jammie Thomas did not do this. Jammie Thomas was not the  
4 person masquerading as tereastarr with her IP address.

5 So that's all I have to say. The case is yours to  
6 deliberate. I sincerely thank you for your attention.

7 MR. GABRIEL: May it please the Court, Counsel,  
8 Ladies and Gentlemen.

9 Before I launch into what I wanted to say, I too  
10 want to take a moment on behalf of Mr. Oppenheim and  
11 Mr. Reynolds and all of my clients to thank you. We know --  
12 we, believe it or not, choose to do this. We know that you  
13 guys did not and gals did not choose to do this, and we very  
14 much appreciate your service and kind attention in this  
15 case.

16 In his closing Mr. Toder talked about, he told you  
17 about theories and speculation and a lot of things that have  
18 nothing to do with the actual issues in this case. I'd like  
19 to focus on the actual issues in this case and the evidence  
20 in this case.

21 The evidence here showed that the record companies  
22 owned and properly registered the copyrights on the 24 sound  
23 recordings that are at issue in this case and that the  
24 defendant infringed on those 24 sound recordings by trading  
25 files on the Kazaa file sharing service under the user name

1 tereastarr.

2 Judge Davis is going to instruct you that to prove  
3 copyright the record companies have to show two things,  
4 valid ownership of their copyrights and registration and  
5 that the defendant violated one of the exclusive copyright  
6 rights, either the right of reproduction or copying or the  
7 right of distribution. We've shown both here.

8 Let me turn first to ownership. And we don't have  
9 to spend a lot of time talking about ownership in this case  
10 because, Ladies and Gentlemen, there is no issue of  
11 copyright ownership in this case. Every one of the record  
12 companies' representatives came here and told you that they  
13 own or control the copyrights of all 24 sound recordings at  
14 issue.

15 Exhibit 3 in the case shows the certificates of  
16 copyright registration, which you will see. They're all in  
17 evidence. They were not disputed. They're all in the names  
18 of the plaintiffs or in companies that ultimately -- in  
19 names of companies that ultimately became the plaintiffs.  
20 That was not disputed.

21 There's no evidence at all that these -- there's  
22 no dispute that as to every one of these 24 recordings they  
23 were all properly registered and, in fact, as you'll see  
24 from the forms, they were registered more than three years  
25 before the Complaint was filed.

1           In fact, Ladies and Gentlemen, the evidence also  
2 shows you that before this trial the defendant admitted that  
3 she had no evidence to contest valid ownership, valid  
4 registration, or that the registrations were filed in  
5 advance. She told you that before trial. Those were --  
6 remember I showed you her answers to requests for admissions  
7 and her deposition testimony. She said, Yeah, I testified  
8 to that then.

9           At this trial, when it came time for trial, she  
10 chose to make us prove it even though what she said before  
11 trial was true. She had no evidence to contest ownership  
12 and Mr. Toder didn't present any evidence just now to  
13 contest it other than to call my clients liars.

14           There is no dispute on copyright ownership in this  
15 case. There's no dispute. We own all the copyrights.  
16 There's no evidence to contradict that. We registered them  
17 validly and before -- three years before the case was filed.

18           And we've put up on the screen to remind you --  
19 you'll see this. These are Exhibits 1 and 2, the recordings  
20 that are at issue. And you will recall that during and  
21 before the trial we have withdrawn the Virgin Records song  
22 "Back" and also the two Godsmack recordings, and they  
23 explained why. It was explained why.

24           There's no issue of ownership in this case. We  
25 own the recordings. So that brings us, Ladies and



1 Gentlemen, to the real issue in this case, which is whether  
2 the defendant violated any of the record companies'  
3 exclusive rights and in particular their exclusive rights to  
4 copy their copyrighted sound recordings or, not "and," or to  
5 distribute those recordings.

6 The defendant talks a lot about the burden of  
7 proof and suggests to you that there's this extremely high  
8 burden, like this is a criminal case, beyond a reasonable  
9 doubt.

10 Please listen to Judge Davis's instructions on the  
11 burden of proof. He's going to instruct you that our burden  
12 is to show you that the greater weight of the evidence, the  
13 greater weight of the evidence shows you that the defendant  
14 either copied or distributed at least one of the copyrighted  
15 works at issue.

16 I want to turn first to distribution and I want  
17 you to listen carefully -- and you'll see the instruction, I  
18 believe, in writing -- to the instruction on distribution.  
19 To prove distribution we do not have to prove who received,  
20 who got that copyrighted work from the defendant.

21 Judge Davis is going to give you an instruction  
22 that the act of making copyrighted sound recordings  
23 available for electronic distribution on a peer-to-peer  
24 network without license from the copyright owners violates  
25 the copyright owners' exclusive right of distribution,

1 regardless of whether actual distribution has been shown.  
2 If it was in the share folder and if it was available for  
3 someone to get it, it was distributed.

4 Ladies and Gentlemen, I respectfully submit that  
5 we met our burden of showing the greater weight of the  
6 evidence proves our case and I respectfully submit we've  
7 more than met our burden here.

8 So what was the evidence of distribution? Let me  
9 turn to that. The evidence showed you -- and I submit,  
10 again, it was not disputed -- that every single one of the  
11 sound recordings that are at issue in this case were in the  
12 share directory, that share folder, which is Exhibit 6.  
13 Every one was available for distribution on Kazaa. It was  
14 available for distribution.

15 And in fact, Ladies and Gentlemen, the evidence  
16 showed you more than that. It showed you there were actual  
17 downloads in this case. SafeNet downloaded a sampling of  
18 the recordings.

19 So not only were they available for distribution,  
20 every one of them, we have evidence they were. They were  
21 downloaded, literally downloaded. Even though we don't have  
22 to prove that to you, we have that evidence.

23 Mark Weaver of SafeNet testified, and I'll agree  
24 with Mr. Toder he was a stand-up guy. He told you -- and,  
25 again, it wasn't disputed -- that on February 21, 2005 his

1 company, which is a company that the record companies retain  
2 by contract, found a user distributing 1,702, 1,702 music  
3 files, including the 24 sound recordings at issue in this  
4 case, on Kazaa.

5 And he said that he found it on the Kazaa file  
6 sharing service at that long IP address we have talked about  
7 too many times, 24.179, et cetera, and he told you that the  
8 user name was tereastarr@kazaa.

9 Mr. Weaver also told you -- and, again, it was not  
10 disputed -- that SafeNet found this individual by logging  
11 onto Kazaa just like anyone else could do. They went on  
12 Kazaa just like anyone else, logged on, and searched for the  
13 record companies' sound recordings.

14 Once SafeNet found the user, it took screen shots  
15 of the user's share folder. And remember he told you it's  
16 like a photograph in time. This is one page of the screen  
17 shot. The user name of the person who is infringing was, of  
18 course, tereastarr@kazaa.

19 And Mr. Weaver told you that SafeNet also  
20 preserved a wide variety of computer data that it found.  
21 Those are going to be Exhibits 7 through 11, which you'll  
22 get an opportunity to look at.

23 Mr. Weaver told you SafeNet didn't make up that  
24 data. It was there. All they did was collect it. It was  
25 existing data. They just had to collect it. It was there,

1 the computers talking to each other. SafeNet just collected  
2 that.

3 So SafeNet is -- and then you'll see this exhibit  
4 is like 60, 70 pages. SafeNet began to download every  
5 single one, every single one of those music files in  
6 tereastarr's share folder, all 1,702. Mr. Weaver told you  
7 that that was in part to make sure that there was a there  
8 there, there were real files there.

9 He told you that he could have downloaded every  
10 single one of the 1,702, but he stopped the download. He  
11 confirmed that there was a there there, there were files,  
12 and then he downloaded a sampling. He talked about a  
13 sampling of 11 recordings. He made the decision not to  
14 download all 1,700, although he could have.

15 The sampling that he downloaded is in evidence,  
16 although it's going to be a CD, not -- I guess you will have  
17 the opportunity to play it. It's Exhibit 12, and that  
18 sampling is there. Tereastarr distributed every one of  
19 these sound recordings to SafeNet. They were made  
20 available, that's distributing, and SafeNet actually got a  
21 sampling of them.

22 Every one of the sound recordings in this case,  
23 all of the ones listed on Exhibits 1 and 2 that have not  
24 been withdrawn were in the share folder and every one was  
25 available for electronic distribution, regardless of whether

1 actual distribution has been shown, and that is not  
2 disputed.

3 And again, Ladies and Gentlemen, remember the  
4 context, remember the context that we're talking about here.  
5 This is file sharing. Tereastarr was on a network -- and I  
6 know this is hard to read and I apologize -- in which  
7 2,314,213 users were online sharing 848 million files.

8 Both Mr. Weaver and Dr. Jacobson told you that  
9 this is the very purpose and nature of Kazaa. People go  
10 there to participate precisely because they want to trade  
11 files. That's what it's about. If no one is trading files,  
12 there's no business for Kazaa. That also proves  
13 distribution, and it wasn't disputed that every recording in  
14 the share folder was available for distribution.

15 So, Ladies and Gentlemen, I submit to you that the  
16 greater weight of the evidence does show you that all 24 of  
17 the sound recordings at issue were distributed, available  
18 for electronic distribution and, in fact, actually. They  
19 were at least distributed to SafeNet and there was no  
20 evidence to the contrary, none.

21 So let me turn to reproduction, copying. Now,  
22 I'll start by saying, given that the greater weight of the  
23 evidence here shows there was distribution, you actually  
24 don't even need to get to this issue. If you find  
25 distribution, you don't even have to get there.

1           But if you choose to get there, you will see that  
2           the greater weight of the evidence shows that the record  
3           companies' copyrighted works were copied without their  
4           permission. They were downloaded to that share folder.

5           Both Mr. Weaver and Dr. Jacobson told you how  
6           legitimate CD's have no metadata. And Mr. Toder talked  
7           about the evidence yesterday. Dr. Jacobson testified on  
8           direct, he told you there was no metadata on a legitimate  
9           CD. Then he shows him a CD. Is there metadata on this one?  
10          Dr. Jacobson is a scientist and he said, I would have to  
11          look at that specifically, but generally they don't have any  
12          metadata on them. And that's one way you know. Mr. Weaver  
13          said the same thing.

14          If you look at the user logs, there's a thing  
15          called a compressed user log and an expanded one. They're  
16          Exhibits 8 and 9. You'll see a great many of the recordings  
17          had metadata and metadata descriptions.

18          And remember Mr. Weaver's colorful testimony about  
19          the signatures of the pirate groups, all those pirate  
20          groups, Ripped By So-and-So, Who Else. These pirate groups  
21          are known and people -- and they're proud of themselves.  
22          They are very proud that they get to be the first one to get  
23          a recording online for people to get and they put their name  
24          on it.

25          Legitimate CD's or CD's ripped by a person putting

1       them on as a normal person if they were your own don't have  
2       anything like that. That shows, Mr. Weaver said and  
3       Dr. Jacobson said, that these were ripped by a pirate group  
4       and that they were downloaded -- that they're unauthorized  
5       copies that were downloaded.

6                It wasn't disputed that these CD's were not  
7       ripped -- were not CD's ripped by tereastarr. We know  
8       they're not CD's ripped by tereastarr because they have all  
9       that metadata from the pirate groups on there.

10              How else do we know these were copied -- these are  
11       unauthorized copies? Mr. Weaver told you about the file  
12       names themselves sometimes have the little signatures of the  
13       pirate groups. You will remember his testimony about that.

14              Both Mr. Weaver and Dr. Jacobson told you about  
15       the naming conventions in the share folder were all over the  
16       map when you look at that metadata. If someone is ripping  
17       their own they use the same convention, name of artist,  
18       song, album, and it's all consistent so they can search the  
19       same way. They both told you the naming conventions were  
20       all over the map, suggesting these were not copied by one  
21       person. These were unauthorized copies.

22              And lastly on reproduction, we know that the music  
23       files in the Kazaa share folder were not any CD's ripped by  
24       this defendant because, assuming she actually ripped her own  
25       CD's at some point in time, the music files in the share

1 folder were in a different format.

2 All but one of the -- or maybe it was two -- of  
3 the 1,702 music files in the share folder, which is what's  
4 at issue in this case, were in MP3 format. The defendant  
5 told you she ripped her own CD's or suggests she ripped her  
6 own CD's and they were all in WMA format, Windows Media  
7 Player format. That's completely different.

8 Now, we acknowledge that the defendant purchased  
9 CD's. She has a number of CD's, whatever many they may be.  
10 She does. She bought a lot of CD's. That doesn't mean she  
11 had a right -- even if there was evidence of her ripping  
12 into the Kazaa share folder or wherever else, she doesn't  
13 have a right to copy her own CD's to a Kazaa share folder  
14 where they are being distributed to millions of other  
15 people. That's an unauthorized distribution. They would be  
16 made available for electronic distribution if they were  
17 ripped into that Kazaa share folder.

18 Ladies and Gentlemen, I submit to you again that  
19 all -- in light of all this evidence, not one bit of which  
20 was disputed, the greater weight of the evidence shows that  
21 the recordings in tereastarr's share folder were copied from  
22 someone else on Kazaa and not ripped by tereastarr.

23 And so I suggest to you that there really is no  
24 question here that someone using the name of tereastarr was  
25 distributing the copyrighted recordings at issue on the date



1 in question and that someone using the name tereastarr  
2 downloaded or copied those recordings from other users on  
3 Kazaa without my clients' permission.

4 So the issue really comes down to whether the user  
5 who was trading files on Kazaa on the date and time in  
6 question under the file -- under the user name tereastarr  
7 was, in fact, the defendant, Jammie Thomas. I submit to  
8 you, Ladies and Gentlemen, that the greater weight of the  
9 evidence shows you that it was. All fingers point at Jammie  
10 Thomas in this case, Ladies and Gentlemen.

11 First let's talk about the IP address and the  
12 modem MAC address. You heard evidence about this from David  
13 Edgar of Charter Communications, another stand-up guy. He  
14 told you that Charter was able to use the IP address that  
15 MediaSentry/SafeNet got.

16 And MediaSentry didn't make it up. Remember the  
17 testimony about data packets. When computers are  
18 communicating to one another, an IP address comes from there  
19 automatically. So we knew what that IP address was on the  
20 date and time.

21 Well, Charter Communications, the way they have  
22 their records -- and Mr. Edgar told you why they keep them.  
23 He told you they go from that IP address to figure out the  
24 modem MAC address number. The modem MAC address number,  
25 Mr. Edgar said, was like a serial number on their machine

1 that they're leasing to their customer.

2 It's important that they keep track of their  
3 machines and it's particularly important because Mr. Edgar  
4 told you that they use that modem MAC address -- that's in  
5 their billing records, that's how they bill their customer.  
6 If they don't have that, Charter Communications goes out of  
7 business.

8 So this evidence -- and then, as you will recall,  
9 Charter got a subpoena. They said, okay, we connected the  
10 IP address to the modem MAC address and then the modem MAC  
11 address to the defendant, Jammie Thomas. So Charter  
12 connected that information, connected those dots for you.

13 And remember -- it's important to remember I had  
14 Ms. Thomas on the stand yesterday read to us her responses  
15 to written questions we sent her and we asked her, What's  
16 your modem MAC address number? Completely independently of  
17 Charter, she told you it was that number. Was that a  
18 coincidence?

19 Second, the tereastarr user name points directly  
20 at the defendant here because she used tereastarr for  
21 everything. It's not disputed. She used it, tereastarr, as  
22 her computer user name. This is her screen shot from her  
23 desktop, "tereastarr." She told you tereastarr was the name  
24 she used for instant messaging and for e-mails. She also  
25 used the name for online accounts, including Wal-Mart and

1 Best Buy. And you saw those things called cached pages.  
2 Here is the cached page from match.com. There's tereastarr  
3 and there's Ms. Thomas. She used it for online video games.  
4 She used the name tereastarr for the website she created and  
5 designed at myspace.com. She used it when she posted to  
6 this antirecording industry blog called The Recording  
7 Industry vs. The People.

8 Ladies and Gentlemen, is it believable that it was  
9 just a coincidence, is it believable that it's just a  
10 coincidence that we had tereastarr@kazaa or is it more  
11 likely that the name, user name, here was tereastarr@kazaa  
12 because it was the defendant, Jammie Thomas?

13 Would you put the chart up again, Tim. Third, now  
14 we know it's the defendant. Remember what she said about  
15 her computer. She only had one computer in the home in all  
16 of the relevant times at issue. That computer was in her  
17 bedroom. She drew that little -- we have the diagram of her  
18 home.

19 And it was password protected and she was the only  
20 one who had the password. There was nobody else who could  
21 use this computer to get into tereastarr, that account, on  
22 her computer. There was no one else who could do it.

23 When she testified in this court she did not try  
24 to tell you anybody else did it. You heard speculation.  
25 You heard questions. Ms. Thomas testified. Did she tell

1 you my kid did it, my boyfriend did it? No. She didn't try  
2 to point to anybody, because she did it.

3 Fourth, remember, Ladies and Gentlemen, the  
4 instant messages. SafeNet told you -- Mark Weaver told you  
5 that SafeNet sent two instant messages to tereastarr@kazaa,  
6 one on February 21, 2005 and one on February 22, 2005.

7 It was not disputed at all that these were sent  
8 and there was not one shred of evidence that this defendant  
9 didn't get them. She testified. Did you hear her say I  
10 never got those instant messages? There is no evidence that  
11 she didn't get them.

12 Finally, in terms of how we know it's Jammie  
13 Thomas -- and, again, does the greater weight of the  
14 evidence persuade you it's Jammie Thomas? That's the  
15 standard.

16 Remember all the testimony about her musical taste  
17 and I spent a lot of time with that, maybe too much time  
18 with that, yesterday. The defendant told you she has  
19 wide-ranging eclectic tastes in music. She listens to all  
20 sorts of artists and groups that many of us may never even  
21 have heard of. We had a debate, I guess, on our side about  
22 Lacuna Coil. I had never heard of them before. They're an  
23 Italian rock group.

24 I went through a long list of names, you'll recall  
25 yesterday, with her of people and they all match. I listen

1 to all these artists. I probably went through 20 artists,  
2 people she goes to concerts for, people she listens to, and  
3 every one of them is in the Kazaa share folder that we  
4 captured, every single one.

5 In fact, Ms. Thomas conceded that it wouldn't  
6 surprise her if there were more than 60 artists in the Kazaa  
7 share folder who are artists that she says she listens to,  
8 60, 6-0. That's a lot of coincidence, that someone's taste  
9 matched 60 of those groups, many of which none of us have  
10 ever heard of.

11 An IP address match and a modem MAC address match,  
12 tereastarr/user name match, instant messages, the musical  
13 taste match, exclusive use of the computer in her home,  
14 these all point in one direction and only one direction,  
15 Jammie Thomas.

16 Jammie Thomas infringed the record companies'  
17 copyrighted sound recordings in this case. We connected the  
18 dots for you. And how does the defendant respond to all of  
19 this evidence? She really doesn't. She doesn't because she  
20 can't. There is no evidence to dispute any of the facts  
21 that I just shared with you.

22 So what do you get instead? You get misdirection,  
23 red herrings, smoke and mirrors, all raised by questions --  
24 in questions by counsel, none of which are evidence. The  
25 Judge is going to instruct you that statements by the

1 lawyers trying the case are not evidence. And all of those  
2 were aimed at preventing you from focusing on the real  
3 issues in this case, which are the ones that I just laid out  
4 for you.

5 Let me remind you of a few of counsel's  
6 speculations. Counsel argued that no one ever uses their  
7 e-mail address as their Kazaa user name. Did you hear any  
8 evidence of that? No.

9 In fact, Dr. Jacobson told you that it wasn't  
10 true. He said he doesn't always get e-mail addresses when  
11 he looks at this, but when he does, they match 50 percent of  
12 the time, 50 percent of the time. People who do this on  
13 Kazaa don't think they're going to get caught. They don't  
14 think about that. There are millions of them. The odds are  
15 probably slim we're going to catch you all.

16 Then we had the ever-changing, ever-fascinating  
17 theories that Mr. Toder floated out there in his questions.  
18 Remember the computer party, they had a big computer party.  
19 This was raised in a hypothetical by counsel. There's no  
20 evidence to support any computer party.

21 In fact, Mr. Weaver and Dr. Jacobson told you it  
22 didn't happen based on the data. Remember that Exhibit 17,  
23 the Charter documents that show the client MAC address.  
24 That client MAC address stays the same I think it was for  
25 years. I can't remember. That shows you there was no

1 switching and switching out of computers. That's where it  
2 would be. There's no evidence of a computer party.

3 Then we got floated out the wireless router  
4 theory. Mr. Toder asked, You know, isn't it possible that  
5 someone was outside her window tapping into her wireless  
6 account? The problem with that is there was no wireless  
7 router.

8 Remember Dr. Jacobson's testimony about  
9 internal -- excuse me -- public and private IP addresses.  
10 The private IP address is when you know that there's a  
11 router. There was no private IP address here. There was no  
12 router. So no one hacked into her system with a wireless  
13 router sitting outside her window.

14 Then we got that long line of questions to  
15 Dr. Jacobson that Mr. Toder alluded to just a minute ago  
16 about pollution, multipeer contamination, hackers, crackers,  
17 MAC address spoofs, zombies, drones. These were all raised  
18 in questions by counsel.

19 May sound impressive, may sound like a horror  
20 movie, but there wasn't one shred of evidence, not one shred  
21 of evidence to support any of those theories. They didn't  
22 put any on. And Dr. Jacobson told you without any dispute  
23 he saw no evidence of any of those, and he knew what they  
24 all were and he said there wasn't any evidence of those.

25 Ladies and Gentlemen, ask yourselves why she

1 didn't call her own expert to testify to any of these  
2 theories that you heard about. He was here in the  
3 courtroom. We brought him here to the courtroom. Why  
4 didn't she ask him about all these theories? Better yet,  
5 ask yourselves why the defendant herself didn't testify  
6 about all of these theories or put on any evidence to  
7 explain or support them.

8 We heard a lot of argument no one saw Ms. Thomas  
9 doing it. Well, it wasn't disputed, Ladies and Gentlemen,  
10 Kazaa is anonymous. That's the idea. The fact is people  
11 don't violate -- commit copyright infringement in the public  
12 square. They do it behind closed doors.

13 And you heard an argument here this afternoon  
14 Mr. Havemeier -- this is big proof, Mr. Havemeier never saw  
15 her doing it. Well, remember Mr. Havemeier is her boyfriend  
16 and he said he was in her house once every couple of weeks,  
17 I think was his testimony, but your memory is what counts.

18 So she has a relationship with Mr. Havemeier and  
19 she sees her boyfriend once every couple of weeks. If I'm  
20 in that relationship, I sure as heck hope my girlfriend  
21 isn't playing on the computer when I get to see her once  
22 every couple of weeks.

23 Then perhaps we have the ultimate in misdirection  
24 play, which is that demonstration that we had yesterday.  
25 They desperately want you to believe that this case is about



1 that hard drive. It isn't. It is undisputed that that hard  
2 drive was not the hard drive that was connected to the  
3 Internet on February 21, 2005. It was installed in March of  
4 2005, weeks later.

5 Ladies and Gentlemen, the only relevance of that  
6 hard drive is the fact that it wasn't the right one and  
7 that's the one she gave us. That's the only relevance of  
8 that hard drive and the fact that the defendant told my  
9 clients and our expert and her own expert that it was the  
10 right hard drive, that that hard drive was changed in  
11 February or January of 2004.

12 Now remember she received a letter from my clients  
13 in August of 2005. That's in evidence. You'll see that.  
14 That was just five months after she had replaced the hard  
15 drive. You would think five months after the fact she would  
16 remember it was just five months ago and not a year and a  
17 half ago.

18 But what did she tell my clients? The letter  
19 said, Call. We'd like to discuss this matter and hopefully  
20 resolve this before litigation. So five months after the  
21 hard drive was replaced, just five months, and six months  
22 after those instant messages were sent she told my clients,  
23 Come look at the computer. You're not going to find  
24 anything. She knew when she had that conversation that we  
25 were not going to find anything. She knew the hard drive

1 had just been replaced.

2 And she led not only our expert, but she led her  
3 own expert to believe that this hard drive was replaced in  
4 January or February of 2004, dates she was absolutely  
5 consistent about in her deposition and every other document  
6 in this case, that is, until her own expert discovered the  
7 truth.

8 Remember Dr. Jacobson told you he didn't have the  
9 actual hard drive. Her expert did and he's the one who  
10 found that tag. Mr. Toder argued to you just a bit ago  
11 here, you know, would she lie about that. The tag is on the  
12 hard drive. The hard drive is inside the machine. Most  
13 people, I suggest, wouldn't see it unless they opened up the  
14 machine and pulled it out.

15 Ladies and Gentlemen, you get to be the judges of  
16 credibility here. You're the only ones who get to judge  
17 that. It's up to you to decide did this defendant just get  
18 the dates mixed up or whether it's not a coincidence that  
19 her whole story just happened to change after her second  
20 deposition and after her own expert figured out what was  
21 going on. Her own expert ratted her out in this case.  
22 That's why they didn't call him.

23 The hard drive that you saw, Ladies and Gentlemen,  
24 has nothing to do with this case except for the fact that  
25 she tried to tell us it was the hard drive that was

1 connected to the Internet at the right time and it wasn't.

2 Please, please do not leave your common sense at  
3 the door. What's going on here was obvious. Just months  
4 after she had the hard drive replaced she said, Come look at  
5 the computer, you're not going to find anything, and then  
6 she gave us the wrong computer.

7 The hard drive that both her expert and the record  
8 companies' expert looked at was not the hard drive that was  
9 connected to the Internet on February 21, 2005, which is the  
10 date that matters.

11 And when, Ladies and Gentlemen, all of these  
12 theories and all of these speculations and all these red  
13 herrings fail, what did the defendant then do? She told you  
14 that all of the various people in this case that we called,  
15 many of whom had no connection to one another whatsoever,  
16 they all got together and they forged documents and they  
17 lied. They lied under oath, that's the accusation that's  
18 being made.

19 Mr. Toder just said to you my clients lied in  
20 declarations, all of them, all the plaintiffs'  
21 representatives came to you and they lied under oath, every  
22 one of them, several of whom are lawyers, sacrificed their  
23 professional licenses and integrities to lie to you under  
24 oath.

25 Counsel asked Dr. Jacobson whether Charter could

1 have forged its documents. I think he used that word. How  
2 come he didn't ask Mr. Edgar that when Mr. Edgar was here?  
3 There's no basis for that suggestion. Why would Charter  
4 forge the documents in this case?

5 He asked Dr. Jacobson whether SafeNet could have  
6 manipulated the data here. He didn't ask Mr. Weaver that  
7 when Mr. Weaver was here. And, again, there is no basis for  
8 that.

9 And now in his closing counsel attacks  
10 Dr. Jacobson, and "attack" is the right word. Ladies and  
11 Gentlemen, again, credibility is for you and we leave that  
12 in your good hands, but Iowa State University, the Iowa  
13 State University Police Department, the United States  
14 Department of Justice, the National Science Foundation, the  
15 National Security Administration, and the United States  
16 Senate have all vouched for Dr. Jacobson's reputation and  
17 integrity and expertise because they all rely on him.

18 And although they attack him, consider that there  
19 wasn't anyone on the other side to contradict him. When  
20 you've got nobody yourself, I guess you're left with not  
21 much else but to attack. And there was no one else to  
22 contradict him with good reason, because the defendant  
23 misled her own expert in this case.

24 And then Mr. Havemeier, he's another liar, her  
25 ex-boyfriend. Remember he testified about that conversation

1 right after she got -- the first letter that she got. He  
2 said to her, Well, they're not going to find anything. You  
3 just changed your hard drive.

4 And what's her response to that? He wasn't being  
5 truthful when he said that. Well, not exactly. In her  
6 deposition she said he wasn't being truthful when he said  
7 that. She tried to back away from that on the stand.

8 Is it believable, Ladies and Gentlemen, is it  
9 credible that all of these people, many of whom didn't know  
10 each other, they all got together, they all forged  
11 documents, they all lied about what had happened in some  
12 grand conspiracy in this courtroom to fool you? Is that  
13 believable? Or is it more believable that the data and the  
14 hard evidence and the testimony that you saw and heard was  
15 the truth?

16 At the beginning of this case, Ladies and  
17 Gentlemen, I told you we were here to ask you to hold the  
18 defendant responsible for what she had done. The greater  
19 weight of the evidence in this case showed you that this  
20 defendant copied and distributed my clients' copyrighted  
21 sound recordings over Kazaa using the name tereastarr. And  
22 not only did she do that, but then she refused to accept  
23 responsibility for it. In fact, she tried to hide her  
24 actions. She didn't accept responsibility and so we come to  
25 you to ask you to hold her responsible.

1           The issue, Ladies and Gentlemen, then remains  
2 what's the right remedy. Judge Davis is going to give you  
3 an instruction about statutory damages. The copyright  
4 statute provides that we can seek damages. The statute says  
5 what they are and there are ranges of numbers.

6           Judge Davis will instruct you about factors that  
7 you get to consider in looking at the statutory damages.  
8 Please look at those and consider them, and I only ask that  
9 you consider that the need for deterrence here is great.

10           Ms. Pariser told you that we would have preferred  
11 to have resolved this matter before we had to file this  
12 lawsuit. The plaintiffs' letter in evidence shows that too.  
13 We would have preferred to resolve it prior to filing a  
14 lawsuit, certainly prior to having to come here and have a  
15 trial.

16           It wasn't to be. The defendant did not take  
17 responsibility for her actions even after she got caught.  
18 She infringed my clients' copyrights and she tried to cover  
19 it up by telling us to look at the hard drive and then  
20 giving us the wrong one.

21           Now, Ladies and Gentlemen, how much in damages are  
22 to be awarded is your job and we leave that in your good  
23 hands. We only ask that you hold this defendant responsible  
24 for what she's done.

25           She took hundreds of the record companies'

1 copyrighted sound recordings. She distributed them to  
2 people from SafeNet. She distributed them to millions of  
3 people, 2 point whatever million people, on Kazaa. They  
4 were made available for anyone to take through electronic  
5 distribution. That's distribution. She distributed them to  
6 millions of people.

7 The record companies could have sued her for  
8 hundreds upon hundreds of sound recordings. They sued on  
9 just 24 because the point here is not to get the biggest  
10 number we could get, this big verdict. The number is to  
11 hold her responsible. We could have sued on hundreds. That  
12 wasn't the point. We sued her on 24. What this defendant  
13 did was wrong. We ask you to hold her responsible for those  
14 24 sound recordings.

15 Ladies and Gentlemen, thank you very much for your  
16 kind attention.

17 THE COURT: Let's take a stretch break.

18 (Pause.)

19 THE COURT: Members of the Jury, we will -- I will  
20 read the instructions to you. You are to follow along with  
21 me. You are not to get ahead of me. You will be able to  
22 take these instructions into the jury room with you and this  
23 is the law that you have to follow.

24 As the instructions will tell you, you are the  
25 finders of the facts of this matter and you will apply the

1 facts that you found in this case to the law as I give it  
2 to you.

3 Members of the Jury, the instructions I gave you  
4 at the beginning of the trial and during the trial remain in  
5 effect. I now give you some additional instructions.

6 You must, of course, continue to follow the  
7 instructions I gave you earlier as well as those I give you  
8 now. You must not single out some instructions and ignore  
9 others, because all are important.

10 The instructions I am about to give you are in  
11 writing and will be available to you in the jury room.  
12 Again, all instructions, whenever given and whether in  
13 writing or not, must be followed.

14 Do not allow sympathy or prejudice to influence  
15 you. The law demands of you a just verdict, unaffected by  
16 anything except the evidence, your common sense, and the law  
17 as I give it to you.

18 I have mentioned the word "evidence." Evidence  
19 includes the testimony of witnesses; documents and other  
20 things received as exhibits; any facts that have been  
21 stipulated, that is, formally agreed, to by the parties; and  
22 any facts that have been judicially noticed, that is, facts  
23 which I say you must accept as true.

24 Certain things are not evidence and I will list  
25 those for you now.



1           Statements, arguments, questions, and comments by  
2           the lawyers trying this case are not evidence.

3           Exhibits that are identified by a party but not  
4           offered or received in evidence are not evidence.

5           Objections are not evidence. Lawyers have a right  
6           and sometimes an obligation to object when they believe  
7           something is improper. You should not be influenced by the  
8           objection. If I sustain an objection to a question or an  
9           exhibit, you must ignore the question or the exhibit and  
10          must not try to guess what the information might have been.

11          Testimony and exhibits that I strike from the  
12          record or tell you to disregard are not evidence and must  
13          not be considered.

14          Anything you see or hear about this case outside  
15          of the courtroom is not evidence.

16          Neither in these instructions nor in any ruling,  
17          action, or remark that I have made during the course of this  
18          trial have I intended to give you any opinion or suggestion  
19          as to what your verdicts should be.

20          During this trial I have occasionally asked  
21          questions of witnesses. Do not assume that because I've  
22          asked questions that I hold an opinion on the matters to  
23          which my questions related.

24          In deciding what the facts are, you may have to  
25          decide what testimony you believe and what testimony you do

1 not believe. You may believe all of what a witness said or  
2 only a part of it or none of it.

3 In deciding what testimony to believe, consider  
4 the witness's intelligence, their opportunity to have seen  
5 or heard the things they testified about, their memories,  
6 any motives they may have for testifying a certain way,  
7 their manner while testifying, whether they said something  
8 different at an earlier time, the general reasonableness of  
9 their testimony, and the extent to which their testimony is  
10 consistent with other evidence that you believe.

11 In deciding whether or not to believe a witness,  
12 keep in mind that people sometimes hear or see things  
13 differently and sometimes forget things. You need to  
14 consider, therefore, whether a contradiction is an innocent  
15 misrecollection or lapse of memory or an intentional  
16 falsehood, and that may depend on whether it is -- it has to  
17 do with an important fact or only a small detail.

18 After making your own judgment, you will give the  
19 testimony of each witness such weight, if any, that you may  
20 think it deserves. In short, you may accept or reject the  
21 testimony of any witness, in whole or in part.

22 In addition, the weight of the evidence is not  
23 necessarily determined by the number of witnesses testifying  
24 to the existence or nonexistence of any fact. You may find  
25 that the testimony of a small number of witnesses as to any

1 fact is more credible than the testimony of a larger number  
2 of witnesses to the contrary.

3 In these instructions you are told that your  
4 verdict depends on whether you find certain facts have been  
5 proved. The burden of proving a fact is upon the party who  
6 claims -- whose claim depends upon that fact.

7 The party who has the burden of proving a fact  
8 must prove it by the greater weight of the evidence. To  
9 prove something by the greater weight of the evidence is to  
10 prove that it is more likely true than not true. It is  
11 determined by considering all the evidence and deciding  
12 which evidence is more believable. If on any issue in the  
13 case the evidence is equally balanced, you cannot find that  
14 issue has been proved. The greater weight of the evidence  
15 is not necessarily determined by the greater number of  
16 witnesses or exhibits a party has presented.

17 You may have heard of the term "proof beyond a  
18 reasonable doubt." That is a stricter standard which  
19 applies only in criminal cases. It does not apply in a  
20 civil case such as this. You should, therefore, put it out  
21 of your minds.

22 You are to consider only the evidence in the case.  
23 However, you are not limited to the statements of the  
24 witnesses. In other words, you are not limited to what you  
25 see and hear as the witnesses testify.

1           You may draw from the facts that you find have  
2           been proved such reasonable inferences as seem justified in  
3           light of your experience. Inferences are deductions or  
4           conclusions that reason and common sense lead you to draw  
5           from facts established by the evidence of the case.

6           I am advised that reports about this trial are  
7           appearing in the newspapers, on television and radio and on  
8           the Internet. The person who wrote or is reporting the  
9           story may not have listened to all the testimony as you  
10          have, may be getting information from people who you will  
11          not see here in court under oath and subject to cross  
12          examination, may emphasize an unimportant point, or may  
13          simply be wrong. The case must be decided by you solely and  
14          exclusively on the evidence received here in court.

15          The rules of evidence ordinarily do not permit  
16          witnesses to testify as to opinions or conclusions. An  
17          exception to this rule exists for expert witnesses. An  
18          expert witness is a person who by education and experience  
19          has become an expert in some art, science, profession, or  
20          calling. Expert witnesses may state their opinions as to  
21          the matters to which they profess to be expert and may also  
22          state their reasons for their opinions.

23          You should consider each expert opinion received  
24          in evidence in this case and give it as much weight as you  
25          think it deserves. If you should decide that the opinion of

1 an expert witness is not based upon sufficient education and  
2 experience or if you should conclude that the reasons given  
3 in support of the opinion are not sound or if you feel that  
4 it is outweighed by other evidence, you may disregard the  
5 opinion entirely.

6 You should consider and decide this case as a  
7 dispute between persons of equal standing in the community,  
8 of equal worth, and holding the same or similar situations  
9 in life. A corporation is entitled to the same fair trial  
10 as a private individual. All persons, including  
11 corporations and other organizations, stand equal before the  
12 law and are to be treated as equals.

13 This is an action for copyright infringement. A  
14 copyright is the exclusive right to copy. A copyrighted  
15 work can be a literary work, musical work, dramatic work,  
16 pantomime, choreographic work, pictorial work, graphic work,  
17 a sculptural work, motion picture, audiovisual work, sound  
18 recording, architectural work, mask works fixed in  
19 semiconductor chip products, or a computer program.

20 The owner of a copyright generally has the right  
21 to exclude any other person from reproducing, preparing  
22 derivative works, distributing, performing, displaying, or  
23 using a work covered by a copyright for a specific period of  
24 time. One who reproduces or distributes a copyrighted work  
25 during the term of the copyright infringes the copyright,

1 unless licensed by the copyright owner.

2 In this case each plaintiff contends it is and at  
3 all relevant times has been the copyright owner or licensee  
4 of exclusive rights under United States copyright with  
5 respect to certain copyrighted sound recordings and that the  
6 defendant, Jammie Thomas, without the permission or consent  
7 of such plaintiff used an online media distribution system  
8 known as Kazaa to download the plaintiffs' copyrighted  
9 recordings and/or to distribute the copyrighted recordings  
10 to the public. Each plaintiff contends that Ms. Thomas's  
11 actions constitute infringement of its copyrights and  
12 exclusive rights under copyright.

13 I will now instruct you on the elements of the  
14 plaintiffs' claims for copyright infringement. In order to  
15 prevail on their copyright infringement claim, the  
16 plaintiffs must prove two things: First, the plaintiffs are  
17 the owners of the works protected by the Copyright Act;  
18 second, the defendant infringed one or more of the rights  
19 granted by the Act. Each of these aspects have several  
20 elements that I will explain to you now.

21 The first thing that each plaintiff must prove is  
22 that it is the owner of the works protected by the Copyright  
23 Act. In order to prove this, such plaintiff must show  
24 either that they -- that it is the owner of the works in  
25 issue or that such plaintiff is licensed by the owners of

1 those works, permitting the plaintiff to claim ownership of  
2 those works or the exclusive rights to the works.

3 A plaintiff's certificate of registration of its  
4 copyright is what is called *prima facie* evidence of the  
5 element of ownership. In other words, if there is no  
6 evidence against a plaintiff as to that element, the  
7 registration certificate alone is sufficient to establish  
8 that element.

9 In addition to establishing that the plaintiffs  
10 are the copyright owners of the works in question, the  
11 plaintiffs must also prove that the defendant infringed the  
12 plaintiffs' rights to those works.

13 Each plaintiffs claim in this case -- each  
14 plaintiff claims in this case that the defendant violated  
15 its exclusive rights to reproduce and distribute its  
16 copyrighted works. One who either reproduces or distributes  
17 a copyrighted work during the term of the copyright  
18 infringes the copyright, unless licensed by the copyright  
19 owner.

20 The act of downloading copyrighted sound  
21 recordings on a peer-to-peer network without license from  
22 the copyright owners violates the copyright owners'  
23 exclusive reproduction right.

24 The act of making copyrighted sound recordings  
25 available for electronic distribution on a peer-to-peer

1 network without license from the copyright owners violates  
2 the copyright owners' exclusive right of distribution,  
3 regardless of whether actual distribution has been shown.

4 If you find that Plaintiff Capitol Records,  
5 Incorporated, had a valid copyright and you find that the  
6 copyright was infringed by the defendant, then you should  
7 find for Plaintiff Capitol Records, Incorporated. You must  
8 then decide on the amount of damages Plaintiff Capitol  
9 Records, Incorporated, is entitled to recover.

10 If, however, you find that such plaintiff did not  
11 prove an infringement by defendant, you should find for the  
12 defendant and not decide any amount of damages.

13 If you find that Plaintiff Sony BMG Music  
14 Entertainment had a valid copyright and you find that the  
15 copyright was infringed by the defendant, then you should  
16 find for Plaintiff Sony BMG Music Entertainment. You must  
17 then decide on the amount of damages Plaintiff Sony BMG  
18 Music Entertainment is entitled to recover.

19 If, however, you find that such plaintiff did not  
20 prove an infringement by the defendant, you should find for  
21 the defendant and not decide any amount of damages.

22 If you find that Plaintiff Arista Records, LLC,  
23 had a valid copyright and you find that the copyright was  
24 infringed by the defendant, then you should find for  
25 Plaintiff Arista Records, LLC. You must then decide on the



1 amount of damages Plaintiff Arista Records, LLC, is entitled  
2 to recover.

3 If, however, you find that such plaintiff did not  
4 prove an infringement by defendant, you should find for the  
5 defendant and not decide any amount of damages.

6 If you find that Plaintiff Interscope Records had  
7 a valid copyright and you find that the copyright was  
8 infringed by the defendant, then you should find for  
9 Plaintiff Interscope Records. You must then decide on the  
10 amount of damages Plaintiff Interscope Records is entitled  
11 to recover.

12 If however, you find that such plaintiff did not  
13 prove an infringement by defendant, you should find for the  
14 defendant and not decide any amount of damages.

15 If you find that Plaintiff Warner Bros. Records,  
16 Incorporated, had a valid copyright and you find that the  
17 copyright was infringed by the defendant, then you should  
18 find for Plaintiff Warner Bros. Records, Incorporated. You  
19 must then decide on the amount of damages Plaintiff Warner  
20 Bros. Records, Incorporated, is entitled to recover.

21 If, however, you find that such plaintiff did not  
22 prove an infringement by defendant, you should find for the  
23 defendant and not decide any amount of damages.

24 If you find that Plaintiff UMG Recordings,  
25 Incorporated, had a valid copyright and you find that the

1 copyright was infringed by the defendant, then you must find  
2 for Plaintiff UMG Recordings, Incorporated. You must then  
3 decide the amount of damages Plaintiff UMG Recordings,  
4 Incorporated, is entitled to recover.

5 If, however, you find that such plaintiff did not  
6 prove an infringement by defendant, you should find for the  
7 defendant and not decide any amount of damages.

8 In this case each plaintiff has elected to recover  
9 statutory damages instead of actual damages and profits.  
10 Under the Copyright Act each plaintiff is entitled to a sum  
11 of not less than \$750 or more than \$30,000 per act of  
12 infringement, that is, per sound recording downloaded or  
13 distributed without license, as you consider just.

14 If, however, you find that the defendant's conduct  
15 was willful, then each plaintiff is entitled to a sum of up  
16 to \$150,000 per act of infringement, that is, per sound  
17 recording downloaded or distributed without license, as you  
18 consider just.

19 In determining the just amount of statutory  
20 damages for an infringing defendant, you may consider the  
21 willfulness of the defendant's conduct, the defendant's  
22 innocence, defendant's continuing of infringement after  
23 notice or knowledge of the copyright or in reckless  
24 disregard of the copyright, effect of the defendant's prior  
25 or concurrent copyright infringement activity, and whether

1 profit or gain was established.

2 "Willful" means that a defendant had knowledge  
3 that his or her actions constituted copyright infringement.

4 There are two types of evidence that are generally  
5 presented during the course of a trial, direct evidence and  
6 circumstantial evidence. Direct evidence is the testimony  
7 of a person who asserts or claims to have actual knowledge  
8 of a fact, such as an eyewitness. Circumstantial evidence  
9 is proof of a chain of facts and circumstances indicating  
10 the existence of a fact.

11 The law makes no distinction between the weight or  
12 value to be given to either direct or circumstantial  
13 evidence, nor is a greater degree of certainty required of  
14 circumstantial evidence than of direct evidence. You should  
15 weigh all the evidence in the case.

16 The knowledge that a person possesses at any given  
17 time may not ordinarily be proved directly, because there is  
18 no way of directly scrutinizing the workings of the human  
19 mind. In determining the issue of what a person knew at a  
20 particular time, you may consider any statements made or  
21 acts done by that person and all other facts and  
22 circumstances received in evidence which may aid in your  
23 determination of that person's knowledge.

24 In conducting your deliberations and returning  
25 your verdict, there are certain rules that you must follow.

1           First, when you go to the jury room you must  
2           select one of your members to act as your foreperson. That  
3           person will preside over your deliberations and speak for  
4           you here in court.

5           Second, it is your duty as jurors to discuss this  
6           case with one another in the jury room. You should try to  
7           reach an agreement if you can do so without violence to your  
8           individual judgment, because a verdict must be unanimous.  
9           That means all 12 of you must agree to the verdict, to each  
10          verdict on the verdict form.

11          Each of you must make your own conscientious  
12          decision, but only after you have considered all of the  
13          evidence, discussed it fully with your fellow jurors, and  
14          listened to the views of your fellow jurors.

15          Do not be afraid to change your opinions if the  
16          discussion persuades you that you should, but do not come to  
17          a decision simply because other jurors think it is right or  
18          simply to reach a verdict.

19          Remember at all times that you are not partisans.  
20          You are judges, judges of the facts. Your sole interest is  
21          to seek the truth from the evidence in the case.

22          Third, if you need to communicate with me during  
23          the course of the deliberations, you may send a note to me  
24          through the court security officer signed by one or more of  
25          the jurors. I will respond as soon as possible, either in

1 writing or orally here in open court. Remember that you  
2 should not tell anyone, including me, how your votes stand  
3 numerically.

4 Fourth, your verdict must be based solely on the  
5 evidence and on the law that I have given to you in my  
6 instructions. The verdict must be unanimous. Nothing I  
7 have said or done is intended to suggest what your verdict  
8 should be. That is entirely for you to decide.

9 Finally, the verdict form is simply the written  
10 notice of the decision that you reach in this case. The  
11 form reads as follows, and I will read it into the record at  
12 this time.

13 United States District Court for the District of  
14 Minnesota. Capitol Records, Incorporated, a Delaware  
15 corporation; Sony BMG Music Entertainment, a Delaware  
16 general partnership; Arista Records, LLC, a Delaware limited  
17 liability company; Interscope Records, a California general  
18 partnership; Warner Bros. Records, Incorporated, a Delaware  
19 corporation; and UMG Recordings, Incorporated, a Delaware  
20 corporation, Plaintiffs, vs. Jammie Thomas, Defendant.  
21 Special Verdict Form.

22 Verdict Form. We, the jury, impaneled in this  
23 matter, hereby answer the special verdict questions put to  
24 us as follows:

25 Capital Records, Incorporated.

1           Question No. 1. Did Plaintiff Capitol Records,  
2 Incorporated, own the copyright to one or more of the sound  
3 recordings it claims defendant infringed? There's a place  
4 for your answer, either "yes" or "no."

5           If you answer "no," go directly to Question No. 6.

6           Question No. 2. If you answered "yes" to the  
7 previous question, did defendant commit an act of  
8 infringement with respect to one or more copyrighted song  
9 recordings owned by Plaintiff Capitol Records, Incorporated?  
10 There's a place for your answer, either "yes" or "no."

11           If you answer "no," go directly to Question No. 6.

12           If you answered "yes" to the previous question, do  
13 you find that the defendant's infringement was committed  
14 willfully? There's a place for your answer, either "yes" or  
15 "no."

16           Question No. 4. If you found that the defendant  
17 committed a nonwillful act of infringement with respect to  
18 one or more copyrighted sound recordings owned by Plaintiff  
19 Capitol Records, Incorporated, please answer both (a) and  
20 (b) below.

21           (a) How many of Capitol Records, Incorporated's  
22 copyrighted sound recordings did the defendant nonwillfully  
23 infringe? And there's a place for your answer.

24           (b) What statutory damages do you award Capitol  
25 Records, Incorporated, for each copyrighted work (\$750 to

1       \$30,000)?

2               If you answered subparts (a) and (b) above, please  
3 go to Question No. 6.

4               Question No. 5. If you found that the defendant  
5 committed a willful act of infringement with respect to one  
6 or more copyrighted sound recordings owned by Plaintiff  
7 Capitol Records, please answer both (c) and (d) below.

8               (c) How many of Capitol Records, Incorporated's  
9 copyrighted sound recordings did the defendant willfully  
10 infringe? There's a place for your answer.

11              (d) What statutory damages do you award Capitol  
12 Records for each copyrighted work (up to \$150,000)? There's  
13 a place for the amount.

14              Sony BMG Music Entertainment.

15              Question No. 6. Did Plaintiff Sony BMG Music  
16 Entertainment own the copyright to one or more of the sound  
17 recordings it claims defendant infringed? And there's a  
18 place for your answer, either "yes" or "no."

19              If you answered "no," go directly to Question  
20 No. 11.

21              Question No. 7. If you answered "yes" to the  
22 previous question, did defendant commit an act of  
23 infringement with respect to one or more copyrighted sound  
24 recordings owned by Plaintiff Sony BMG Music Entertainment?  
25 There's a place for your answer, either "yes" or "no."

1           If you answered no, go directly to Question  
2 No. 11.

3           Question No. 8. If you answered "yes" to the  
4 previous question, do you find that the defendant's  
5 infringement was committed willfully? There's a place for  
6 your answer, either "yes" or "no."

7           Question No. 9. If you found the defendant  
8 committed a nonwillful act of infringement with respect to  
9 one or more copyrighted sound recordings owned by Plaintiff  
10 Sony BMG Music Entertainment, please answer both (a) and (b)  
11 below.

12           (a) How many of Sony BMG Music Entertainment's  
13 copyrighted sound recordings did the defendant nonwillfully  
14 infringe? And there's a place for the amount.

15           (b) What statutory damages do you award Sony BMG  
16 Music Entertainment for each copyrighted work (\$750 to  
17 \$30,000)? There's a place for the amount.

18           If you answered subparts (a) and (b) above, please  
19 go to Question 11.

20           Question No. 10. If you found that defendant  
21 committed a willful act of infringement with respect to one  
22 or more copyrighted sound recordings owned by Plaintiff Sony  
23 BMG Music Entertainment, please answer both (c) and (d)  
24 below.

25           (c) How many of Sony BMG Music Entertainment's



1 copyrighted sound recordings did the defendant willfully  
2 infringe? There's a place for the amount.

3 (d) What amount of statutory damages do you award  
4 Sony BMG Music Entertainment for each copyrighted work (up  
5 to \$150,000)? And there's a place for the amount.

6 Arista Records, LLC.

7 Question No. 11. Did Plaintiff Arista Records,  
8 LLC, own the copyright to one or more of the sound  
9 recordings it claims defendant infringed? There's a place  
10 for your answer, either "yes" or "no."

11 If you answered "no," go directly to Question  
12 No. 16.

13 Question No. 12. If you answered "yes" to the  
14 previous answer, did defendant commit an act of infringement  
15 with respect to one or more copyrighted sound recordings  
16 owned by Plaintiff Arista Records, LLC? Answer "yes" or  
17 "no."

18 If you answered "no," go directly to Question  
19 No. 16.

20 If you answered "yes" to the previous question, do  
21 you find that the defendant's infringement was committed  
22 willfully? There's a place for your answer, either "yes" or  
23 "no."

24 Question No. 14. If you found that the defendant  
25 committed a nonwillful act of infringement with respect to

1 one or more copyrighted sound recordings owned by Plaintiff  
2 Arista Recordings, LLC, please answer both (a) and (b)  
3 below.

4 (a) How many of Arista Records, LLC's copyrighted  
5 sound recordings did the defendant nonwillfully infringe?  
6 And there's a place for the amount.

7 What statutory damages do you award Arista  
8 Records, LLC, for each copyrighted work (\$750 to \$30,000)?  
9 And there's a place for the amount.

10 If you answered subparts (a) and (b) above, please  
11 go to Question No. 16.

12 Question No. 15. If you found that the defendant  
13 committed a willful act of infringement with respect to one  
14 or more copyrighted sound recordings owned by Plaintiff  
15 Arista Records, LLC, please answer both (c) and (d) below.

16 (c) How many of Arista Records, LLC's copyrighted  
17 sound recordings did the defendant willfully infringe? And  
18 there's a place for the amount.

19 (d) What statutory damages do you award Arista  
20 Records, LLC, for copyright -- for each copyrighted work (up  
21 to \$150,000)? And there's a place for the amount.

22 Interscope Records.

23 Question No. 16. Did Plaintiff Interscope  
24 Records own a copyright to one or more of the sound  
25 recordings it claims defendant infringed? And there's a

1 place for the amount [sic].

2 If you answered "no", go directly to Question  
3 No. 21.

4 Question No. 17. If you answered "yes" to the  
5 previous question, did defendant commit an act of  
6 infringement with respect to one or more copyrighted sound  
7 recordings owned by Plaintiff Interscope Records? There's a  
8 place for your answer, either "yes" or "no."

9 If you answered "no," go directly to Question  
10 No. 21.

11 If you answered "yes" to the previous question, do  
12 you find that the defendant's infringement was committed  
13 willfully? There's a place for your answer, either "yes" or  
14 "no."

15 Question No. 19. If you find that the defendant  
16 committed a nonwillful act of infringement with respect to  
17 one or more copyrighted sound recordings owned by Plaintiff  
18 Interscope Records, please answer both (a) and (b) below.

19 (a) How many of Interscope Records' copyrighted  
20 sound recordings did the defendant nonwillfully infringe?  
21 There's a place for the amount.

22 (b) What statutory damages do you award  
23 Interscope Records for each copyrighted work? There's a  
24 place for the amount, \$750 to \$30,000.

25 If you answered subparts (a) and (b) above, please

1 go to Question No. 21.

2 Question No. 20. If you found that the defendant  
3 committed a willful act of infringement with respect to one  
4 or more copyrighted sound recordings owned by Plaintiff  
5 Interscope Records, please answer both (c) and (d) below.

6 How many of Interscope Records' copyrighted sound  
7 recordings did the defendant willfully infringe? And  
8 there's a place for the amount.

9 (d) What statutory damages do you award  
10 Interscope Records for each copyrighted work (up to  
11 \$150,000)?

12 Warner Bros. Records, Incorporated.

13 Did Warner Bros. Records, Incorporated, own the  
14 copyright to one or more of the sound recordings it claims  
15 defendant infringed? There's a place for the amount -- a  
16 place for you to answer that question, either "yes" or "no."

17 If you answered "no," go directly to Question  
18 No. 26.

19 Question No. 22. If you answered "yes" to the  
20 previous question, did defendant commit an act of  
21 infringement with respect to one or more copyright  
22 recordings owned by Plaintiff Warner Bros.? Please answer  
23 "yes" or "no."

24 If you answered "no," go directly to Question  
25 No. 26.

1           If you answered "yes" to the previous question, do  
2 you find the defendant's infringement was committed  
3 willfully? There's a place for your answer, either "yes" or  
4 "no."

5           No. 24. If you found that the defendant committed  
6 a nonwillful act of infringement with respect to one or more  
7 copyrighted sound recordings owned by Plaintiff Warner  
8 Bros., please answer both (a) and (b) below.

9           (a) How many of Warner Bros.'s copyrighted sound  
10 recordings did the defendant nonwillfully infringe? And  
11 there's a place for the amount.

12           What statutory damages do you award Warner Bros.  
13 for each of the copyrighted work -- for each copyrighted  
14 work? An amount from \$750 to \$30,000.

15           If you answered (a) and (b) above, please go to  
16 Question No. 26.

17           Question No. 25. If you found that the defendant  
18 committed a willful act of infringement with respect to one  
19 or more copyrighted sound recordings owned by Plaintiff  
20 Warner Bros., please answer (c) and (d) below.

21           (c) How many of Warner Bros., Incorporated's  
22 sound recordings did the defendant willfully infringe?

23           (d) What statutory damages do you award Warner  
24 Bros. for each copyrighted work (up to \$150,000)? Then  
25 there's a place for the amount.

1           UMG Recordings, Incorporated.

2           Question No. 26. Did Plaintiff UMG own the  
3 copyright to one or more of the sound recordings it claims  
4 defendant infringed? There's a place for your answer,  
5 either "yes" or "no."

6           If you answered "no," go directly to the signature  
7 page at the end of this verdict form.

8           27. If you answered "yes" to the previous  
9 question, did the defendant commit an act of infringement  
10 with respect to one or more copyrighted recordings owned by  
11 Plaintiff UMG? There's a place for your answer, either  
12 "yes" or "no."

13           If you answered "no," go directly to the signature  
14 section at the end of the verdict form.

15           Question No. 28. If you answered "yes" to the  
16 previous answer, do you find the defendant's infringement  
17 was committed willfully? There's a place for your answer,  
18 either "yes" or "no."

19           Question 29. If you found the defendant committed  
20 a nonwillful act of infringement with respect to one or more  
21 copyrighted sound recordings owned by Plaintiff UMG, please  
22 answer (a) and (b) below.

23           (a) How many of UMG's copyrighted sound  
24 recordings did the defendant nonwillfully infringe? There's  
25 a place for an amount.

1           (b) What statutory damages did you award -- do  
2 you award UMG for each copyrighted work (\$750 to \$30,000)?  
3 And there's a place for the amount.

4           If you answered (a) and (b) above, please go to  
5 the signature section at the end of the verdict form.

6           Question No. 30. If you found that the defendant  
7 committed a willful act of infringement with respect to one  
8 or more copyrighted sound recordings owned by Plaintiff UMG,  
9 please answer both (c) and (d) below.

10           How many of UMG Recordings, Incorporated's  
11 copyrighted sound recordings did the defendant willfully  
12 infringe? And there's a place for the amount.

13           (d) What statutory damages do you award UMG for  
14 each copyrighted work (up to \$150,000)?

15           Once you've completed this verdict form and your  
16 verdicts are unanimous, it is to be signed and dated by your  
17 foreperson and at that point put it in an envelope, sealed,  
18 and knock on the door and tell the court security officer  
19 that you've reached a verdict. I will come back into court.  
20 You will come back into court. You will hand your verdict  
21 to me and I will read the verdict for the record and that  
22 will be the end of your service.

23           Now, when you begin your deliberations you will  
24 have all the evidence that was admitted into this trial and  
25 that will go back to the jury room with you, along with the

1 jury instructions and along with one verdict form. There  
2 will be an MP3 player sent back. So if you need to listen  
3 to any of the sound recordings, you may do so.

4 Again, if you have any questions, you can send out  
5 a question. Please seal it and send it out to me and I will  
6 respond as quickly as possible to any of your concerns.

7 Let me tell you what the -- how the deliberations  
8 will go. You will be kept together, you will have lunch  
9 together, and you will deliberate until you reach a verdict.  
10 If you have not reached a verdict by 4:15 today, we will  
11 stop at 4:15 and then we will start up tomorrow, Friday,  
12 again on your deliberations at 8:30 and then you'll  
13 deliberate until you reach a verdict tomorrow and we will  
14 stop at 4:30 tomorrow.

15 If you have not reached a verdict by Friday,  
16 because Monday is a federal holiday we will not have court  
17 and you will start deliberations again on Tuesday at 8:30  
18 and continue.

19 Counsel, any additions or corrections to the  
20 Court's final charge to the jury?

21 MR. GABRIEL: No, Your Honor.

22 MR. TODER: None from defendant, Your Honor.

23 THE COURT: If the court security officer will  
24 come forward to be sworn in.

25 THE CLERK: Please raise your right hand.



1 (Court security officer sworn in.)

2 THE COURT: Members of the Jury, you will now  
3 begin your deliberations. All rise for the jury.

4 (Jury excused.)

5 **IN OPEN COURT**

6 **(JURY NOT PRESENT)**

7 THE COURT: Anything further for the plaintiff in  
8 this matter?

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

10 THE COURT: We need to know where -- are you going  
11 to be located in the building?

12 MR. GABRIEL: We all have cell phones, Your Honor.

13 THE COURT: Make sure that Mrs. Wegner has your  
14 telephone numbers so we can contact you as quickly as  
15 possible if there's any questions or a verdict. I am  
16 assuming that you want to be present?

17 MR. GABRIEL: Yes, Your Honor, and we are close  
18 by.

19 THE COURT: Counsel, do you wish to be present for  
20 the verdict?

21 MR. TODER: Yes, Your Honor, and we'll be  
22 available by cell phone.

23 THE COURT: The only thing that's left is that we  
24 do have several instructions for the press if they -- there  
25 was a request by several of the press for the jury

1 instructions and so we do have a couple of copies that we  
2 can give you. That includes bloggers too.

3 Anything else before I adjourn?

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

5 THE COURT: The jury will start their lunch at  
6 11:30. So that usually takes about an hour to 45 minutes,  
7 and so you should get your lunch during that period of time.

8 Thank you.

9 (Recess taken at 11:15 a.m.)

10 \* \* \* \* \*

11 (2:00 p.m.)

12 **IN OPEN COURT**

13 **(JURY NOT PRESENT)**

14 THE COURT: Counsel, I received two questions from  
15 the jury. The first one was dealing with wanting to see the  
16 deposition transcript of the defendant. I sent back a note  
17 saying that they had received everything and that they will  
18 not be receiving the deposition transcript.

19 I just received another question dealing with the  
20 statutory damages dealing with willfulness. I am proposing  
21 to send back that if you find defendant's conduct was  
22 willful, you may award statutory damages from \$750 to  
23 \$150,000.

24 MR. GABRIEL: We agree with that, Your Honor.

25 MR. TODER: Would you read that back, please?

1 THE COURT: If you find the defendant's conduct  
2 was willful, you may award statutory damages from \$750 to  
3 \$150,000.

4 MR. TODER: If you're going to send it back like  
5 that, it's going to stick out all by itself. Could the  
6 Court please say if you find that she actually infringed and  
7 then found that it was willful, the range?

8 THE COURT: I don't have the question in front of  
9 me. Do you have the question?

10 THE CLERK: I'll go get it.

11 MR. TODER: Are you just going to put a number in  
12 there; is that what you are going to do?

13 THE COURT: They just want to know what the bottom  
14 figure is for willful. You have it in front of you.

15 MR. TODER: Yes, I do.

16 THE COURT: It reads as follows: "Judge Davis,  
17 Please clarify the range of infringements. Nonwillfulness,  
18 \$750 to \$30,000. Willful, blank to \$150,000." That's  
19 just --

20 MR. TODER: And the Court is going to fill in the  
21 blank?

22 THE COURT: That's correct.

23 MR. TODER: Okay.

24 THE COURT: \$750 is the bottom figure.

25 MR. TODER: That's fine with me. I don't object

1 to that.

2 THE COURT: I'll send it back. Thank you.

3 (Recess taken at 2:05 p.m.)

4 \* \* \* \* \*

5 (4:15 p.m.)

6 **IN OPEN COURT**

7 **(JURY PRESENT)**

8 THE COURT: Members of the Jury, have you reached  
9 a verdict in this matter?

10 FOREPERSON: Yes, we have, Your Honor.

11 THE COURT: Would you turn it over.

12 LAW CLERK: In the United States District Court  
13 for the District of Minnesota. Capitol Records,  
14 Incorporated, a Delaware corporation; Sony BMG Music  
15 Entertainment, a Delaware general partnership; Arista  
16 Records, LLC, a Delaware limited liability company;  
17 Interscope Records, a California general partnership; Warner  
18 Bros. Records, Incorporated, a Delaware corporation; and UMG  
19 Recordings, Incorporated, a Delaware corporation,  
20 Plaintiffs, vs. Jammie Thomas, Defendant, Case No.  
21 06-CV-1497.

22 We, the jury, impaneled in this matter, hereby  
23 answer the special verdict questions put to us as follows:

24 Capitol Records, Incorporated.

25 1. Did Plaintiff Capitol Records, Incorporated,

1 own the copyright to one or more of the sound recordings it  
2 claims defendant infringed? Yes.

3 2. If you answered "yes" to the previous  
4 question, did defendant commit an act of infringement with  
5 respect to one or more copyrighted song recordings owned by  
6 Plaintiff Capitol Records, Incorporated? Yes.

7 3. If you answered "yes" to the previous  
8 question, do you find that the defendant's infringement was  
9 committed willfully? Yes.

10 5. If you found that the defendant committed a  
11 willful act of infringement with respect to one or more  
12 copyrighted sound recordings owned by Plaintiff Capitol  
13 Records, Incorporated, please answer both (c) and (d) below.

14 (c) How many of Capitol Records, Incorporated's  
15 copyrighted sound recordings did the defendant willfully  
16 infringe? One.

17 (d) What statutory damages do you award Capitol  
18 Records, Incorporated, for each copyrighted work (up to  
19 \$150,000)? \$9,250.

20 Sony BMG Music Entertainment.

21 6. Did Plaintiff Sony BMG Music Entertainment own  
22 the copyright to one or more of the sound recordings it  
23 claimed defendant infringed? Yes.

24 7. If you answered "yes" to the previous  
25 question, did defendant commit an act of infringement with

1 respect to one or more copyrighted sound recordings owned by  
2 Plaintiff Sony BMG Music Entertainment? Yes.

3 8. If you answered "yes" to the previous  
4 question, do you find that the defendant's infringement was  
5 committed willfully? Yes.

6 10. If you found that the defendant committed a  
7 willful act of infringement with respect to one or more  
8 copyrighted sound recordings owned by Plaintiff Sony BMG  
9 Music Entertainment, please answer both (c) and (d) below.

10 (c) How many of Sony BMG Music Entertainment's  
11 copyrighted sound recordings did the defendant willfully  
12 infringe? Six.

13 (d) What statutory damages do you award Sony BMG  
14 Music Entertainment for each copyrighted work (up to  
15 \$150,000)? \$9,250.

16 Arista Records, LLC.

17 11. Did Plaintiff Arista Records, LLC, own the  
18 copyright to one or more of the sound recordings it claims  
19 defendant infringed? Yes.

20 12. If you answered "yes" to the previous  
21 question, did defendant commit an act of infringement with  
22 respect to one or more copyrighted sound recordings owned by  
23 Plaintiff Arista Records, LLC? Yes.

24 13. If you answered "yes" to the previous  
25 question, do you find that the defendant's infringement was

1 committed willfully? Yes.

2 15. If you found that the defendant committed a  
3 willful act of infringement with respect to one or more  
4 copyrighted sound recordings owned by Plaintiff Arista  
5 Records, LLC, please answer both (c) and (d) below.

6 (c) How many of Arista Record, LLC's copyrighted  
7 sound recordings did the defendant willfully infringe? Two.

8 (d) What statutory damages do you award Arista  
9 Records, LLC, for each copyrighted work (up to \$150,000)?  
10 \$9,250.

11 Interscope Records.

12 16. Did Plaintiff Interscope Records own the  
13 copyright to one or more of the sound recordings it claimed  
14 the defendant infringed? Yes.

15 17. If you answered "yes" to the previous  
16 question, did defendant commit an act of infringement with  
17 respect to one or more copyrighted sound recordings owned by  
18 Plaintiff Interscope Records? Yes.

19 18. If you answered "yes" to the previous  
20 question, do you find that the defendant's infringement was  
21 committed willfully? Yes.

22 20. If you found that the defendant committed a  
23 willful act of infringement with respect to one or more  
24 copyrighted sound recordings owned by Plaintiff Interscope  
25 Records, please answer both (c) and (d) below.

1 (c) How many of Interscope Records' copyrighted  
2 sound recordings did the defendant willfully infringe?  
3 Three.

4 (d) What statutory damages do you award  
5 Interscope Records for each copyrighted work (up to  
6 \$150,000)? \$9,250.

7 Warner Bros. Records, Incorporated.

8 21. Did Plaintiff Warner Bros. Records,  
9 Incorporated, own the copyright to one or more of the sound  
10 recordings it claims defendant infringed? Yes.

11 22. If you answered "yes" to the previous  
12 question, did defendant commit an act of infringement with  
13 respect to one or more copyrighted sound recordings owned by  
14 Plaintiff Warner Bros. Records, Incorporated? Yes.

15 23. If you answered "yes" to the previous  
16 question, do you find that the defendant's infringement was  
17 committed willfully? Yes.

18 25. If you found that the defendant committed a  
19 willful act of infringement with respect to one or more  
20 copyrighted sound recordings owned by Plaintiff Warner Bros.  
21 Records, Incorporated, please answer both (c) and (d) below.

22 (c) How many of Warner Bros. Records,  
23 Incorporated's copyrighted sound recordings did the  
24 defendant willfully infringe? Three.

25 (d) What statutory damages do you award Warner



1 Bros. Records, Incorporated, for each copyrighted work (up  
2 to \$150,000)? \$9,250.

3 UMG Recordings, Incorporated.

4 26. Did Plaintiff UMG Recordings, Incorporated,  
5 own the copyright to one or more of the sound recordings it  
6 claims defendant infringed? Yes.

7 27. If you answered "yes" to the previous  
8 question, did defendant commit an act of infringement with  
9 respect to one or more copyrighted sound recordings owned by  
10 Plaintiff UMG Recordings, Incorporated? Yes.

11 28. If you answered "yes" to the previous  
12 question, do you find that the defendant's infringement was  
13 committed willfully? Yes.

14 30. If you found that the defendant committed a  
15 willful act of infringement with respect to one or more  
16 copyrighted sound recordings owned by Plaintiff UMG  
17 Recordings, Incorporated, please answer both (c) and (d)  
18 below.

19 (c) How many of UMG Recordings, Incorporated's  
20 copyrighted sound recordings did the defendant willfully  
21 infringe? Nine.

22 (d) What statutory damages do you award UMG  
23 Recordings, Incorporated, for each copyrighted work (up to  
24 \$150,000)? \$9,250.

25 So say we all, this 4th day of October, 2007.

1 Jill Maureen Forseen signed.

2 THE COURT: Members of the Jury, is this your true  
3 and correct verdict, so say you one, so say you all?

4 THE JURY: (Yes.)

5 THE COURT: Poll the jury.

6 THE CLERK: Is this your true and verdict correct?  
7 Jill Forseen.

8 JUROR FORSEEN: Yes.

9 THE CLERK: Benjamin Rossow.

10 JUROR ROSSOW: Yes.

11 THE CLERK: Lisa Heyesen.

12 JUROR HEYESEN: Yes.

13 THE CLERK: James Anderson.

14 JUROR ANDERSON: Yes.

15 THE CLERK: Kathleen Burt.

16 JUROR BURT: Yes.

17 THE CLERK: Michael Hegg.

18 JUROR HEGG: Yes.

19 THE CLERK: Lisa Reinke.

20 JUROR REINKE: Yes.

21 THE CLERK: Bruce Cornelius.

22 JUROR CORNELIUS: Yes.

23 THE CLERK: Kathy Messenger.

24 JUROR MESSENGER: Yes.

25 THE CLERK: Douglas Bitzan.

1 JUROR BITZAN: Yes.

2 THE CLERK: Dale Curtis.

3 JUROR CURTIS: Yes.

4 THE CLERK: Michele Nivala.

5 JUROR NIVALA: Yes.

6 THE COURT: Members of the Jury, I wish to thank  
7 you for your time and consideration in this case. It's very  
8 important that we have members from our communities come and  
9 serve as jurors. As you found out, jury service is very  
10 important and very stressful. I wish to thank you for all  
11 the judges of this district.

12 Now you are finished with this trial. What I need  
13 you to do is to leave all the evidence in the jury room and  
14 we will collect that. You can take home anything that  
15 belongs to you, including the jury instructions that I gave  
16 to you, any notes that you made on this case. Please leave  
17 the notebooks there, but you can take the pages with you.  
18 And anything else that belongs to you that's in the jury  
19 room, please collect everything up and then you'll come into  
20 my chambers and we'll talk for a few minutes before I excuse  
21 you.

22 All right. Any questions? All right. All rise  
23 for the jury.

24 (Jury excused.)

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**IN OPEN COURT**

**(JURY NOT PRESENT)**

THE COURT: Anything further at this time?

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

MR. TODER: No, Your Honor.

(Court adjourned at 4:30 p.m.)

\* \* \*

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

Certified by: s/ Lori A. Simpson

Lori A. Simpson, RMR-CRR