



Roughrider Professional Building
8209 Roughrider Dr., Suite 200
Windcrest, TX 78239

T (210) 271-2999
F (888) 511-7894
www.WhatsOnTheComputer.com
Tax ID: 26-4329342

August 6, 2011

Ira Gould, Esq.
120 North Lasalle Street, Suite 2750
Chicago, IL 60602
(312) 781-0680

GCIS Case Number: 201012701 - Bryan Pringle

Dear Mr. Gould,

1. Background: I am president of Gallant Computer Investigative Services (GCIS), LLC. GCIS is licensed as a Private Investigations Company by the Texas Private Security Bureau (A15633). I have over 23 years investigative experience, including over 15 years dedicated primarily to computer related crimes and computer forensics. I served as a federal agent in the US Air Force with the Air Force Office of Special Investigations (AFOSI) for almost 15 years, and was the case agent on numerous significant investigations and provided computer forensics support and/or consultation to hundreds of investigations. Following my retirement from the Air Force in 2001, I entered the corporate computer forensics/computer security industry with a startup company, and helped build it into an internationally recognized leader in computer forensics, incident response, and incident response training. I am an AccessData Certified Instructor and AccessData Certified Examiner, as well as a contract instructor for AccessData Corp., for whom I teach an introductory computer forensics course to both law enforcement and corporate investigators. I have trained hundreds of federal, state and local law enforcement officials, as well as IT security personnel in the proper methodology for securing and analyzing computer evidence. I am a Certified Information Systems Security Professional (CISSP), an internationally recognized computer security certification. I am a contract instructor for New Horizons Computer Learning Center, where I teach CISSP preparatory courses to IT security personnel. I have multiple computer forensics certifications and have published numerous articles on computer forensics, e-discovery, and other computer security-related matters. Specific information regarding my qualifications is contained in my CV, a copy of which is attached to this report.

2. Support Requested: I was retained by the Gould Law Group on May 7, 2010, as a computer forensics expert, to analyze a CD-ROM that contained the creation file of the derivative version Bryan Pringle's song, "Take a Dive," to determine the date(s) the file(s) were created, as well as the date the CD-ROM was created (burned).

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EXHIBIT A



3. On December 21, 2010, Mr. Pringle personally delivered to me one CD-ROM for analysis. The disc was a white Verbatim brand, and the serial number was 9E24F221861. It was hand marked, "PROMO PHOTOS/ 1999 ENSONIQ.NRG FILES." (A copy of the disk's label is appended to this report). Mr. Pringle informed me he was the person who labeled the disk. I initialed, dated, and initiated chain of custody on the evidence (Tag 2).

A. Mr. Pringle stated he created the music files contained on Tag 2 in 1999 using an ASR-10 keyboard and saved the files to an external SCSI¹ hard drive. He then took the SCSI hard drive and connected it to a Windows computer (he believed a Windows 98 system) and used Ensoniq Disk Manager (EDM) software to create the .NRG images. (Mr. Pringle stated he no longer possesses the hardware or software he used to create Tag 2 due to a burglary of his storage facility located in Abilene, TX, in October 2000, in which over \$12,000 worth of equipment was stolen. Pringle provided a copy of the police report with is attached to this report). The .NRG image files not only contained the various parts to the music, but also contained the operating system files needed to boot the ASR-10 keyboard. These images appear to be Nero Image files (.NRG) (based solely on the file extension "NRG"). Mr. Pringle explained he used Nero to extract the image files to create a new CD-ROM to boot the ASR-10.

B. I copied the file, "DISK05.NRG" to the desktop of a forensic computer running Windows XP Pro (64 bit), and burned this file as an image to a new CD-ROM using Nero Burning ROM Ver 6.6.0.3. I initiated chain of custody on this newly burned CD-ROM (Tag 3). Mr. Pringle then took this CD-ROM, and under my direct observation, booted an Ensoniq ASR-10 keyboard that had an external CD-ROM drive attached. He demonstrated how the keyboard works, and played for me his song, "Take a Dive" from the ASR-10 keyboard. After the demonstration, I maintained control and custody of this CD-ROM.

4. On January 3, 2011, I created a forensic copy of both CD-ROMs (Tags 2 and 3) using Forensic Toolkit Imager, Version 3.0.0.1443, and processed them with FTK Version 3.2.0.32216 (License number: 1-1205090). The CD's (Tag 2) volume name was "990909_0118." This appears to be the default disk name that is used by most CD writing software. It typically corresponds to the date and time the CD is created. In this case, that would mean Sept 9, 1999 at 1:18.

A. Forensic analysis of Tag 2 determined there were two "sessions" written to the disk. This means that groups of files were saved to the disk on two different occasions. Session one contained one directory named "promo photos" which contained 134 digital photographs. This files were all dated 9-8-1999. The second session contained four files present as follows: "DISK02.NRG," "DISK03.NRG," "DISK04.NRG," and "DISK05.NRG." This files were all dated 8-22-1999. There was also a directory

¹ Small Computer Serial Interface. Computer technology that permits the "daisy chaining" of external computer hardware such as hard drives, CD-ROM drives, etc.



named “promo photos.” Cursory analysis metadata associated with each of the 134 images contained in the “promo photo” directory disclosed the images were all taken 09-08-1999 with an Olympus C900Z/D400Z digital camera. According to the Olympus website (http://www.olympus-global.com/en/corc/history/camera/popup/digital_c900z_movie.cfm), this camera was released in 1998.

B. The file named “DISK05.NRG,” which, according to Mr. Pringle, is the creation file containing the derivative version of Pringle’s song “Take a Dive,” has a creation date of 8-22-1999, with a last modified time of 12:54 p.m.

C. I also examined the original CD-ROM (Tag 2) with a utility called NeroInfoTool, which determined that the content of this particular CD-ROM was created on “9 September 1999” (i.e. the CD-ROM was burned September 9, 1999). This corresponds to the CD volume name described above. NeroInfoTool is a free “non-forensic” application that identifies when a CD-ROM was burned, as well as other information concerning the computer’s CD-ROM drives.

D. As stated, there were only two sessions written to this disk, with the last session written on September 9, 1999. Due to this fact, no additional data was added to the CD-ROM, and thus none of the existing files on the CD-ROM, including “DISK05.NRG” were modified after September 9, 1999. This means that the guitar twang sequence existed in the original “DISK05.NRG” file and could not possibly have been added to the file contained on the CD-ROM after September 9, 1999 (i.e. Mr. Pringle could not have gone back and later added the guitar twang sequence to the “DISK05.NRG” file contained on the CD-ROM, after he heard “I Gotta Feeling”).

5. On January 3, 2011, I contacted Verbatim Americas, LLC, via their customer support web page and requested they research their records to determine the date the CD-ROM disc (Tag 2) (serial number 9E24F221861) was manufactured and sold in the United States. On March 17, 2011, Verbatim Customer Support advised by telephone, then via email, that this particular CD-ROM was manufactured in Taiwan on February 24, 1999 and this type of CD-ROM has been out of production since late 1999. The last shipment to a distributor was December 29, 2003. A copy of their email is appended to this report.

6. On March 15, 2011, Mr. Pringle forwarded to me an email from Mr. Gary Giebler, Giebler Enterprises, in which Mr. Giebler informed him he (Pringle) purchased EDM on May 18, 1999. The serial number for his copy of EDM was “3998.” A copy of his receipt is attached to this report.

7. On March 17, 2011, I purchased a copy of EDM from Giebler Enterprises and discussed with Mr. Giebler how the software created the .NRG files. He advised he wrote the EDM program, as well as the ASR-10 operating system. The ASR-10 operating system is not compatible with any other operat-

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ing system, and it had to be booted using an EDM created disk. The EDM files are a “proprietary” .NRG format that are compatible with Nero for the purposes of creating a bootable CD-ROM or floppy disk. He advised that since I was able to extract the DISK05.NRG file from Tag 2, burn a new CD-ROM with Nero that was able to boot the ASR-10 keyboard, that .NRG file could ONLY have been created with EDM. I was able to use EDM to view the contents of the various .NRG files. When asked if there would be dates associated with the ASR-10 operating system that might help “date” the .NRG files, he advised there were not and that the best indicator of the original date of the files would be the dates on the CD-ROM. He also stated there was a possibility that the licensee and license number might be located within the .NRG files. Analysis of the .NRG files to locate this information pertaining to Mr. Pringle’s license information was unsuccessful.

8. Based on the analysis of the data provided to me, August 22, 1999, at 12:54 pm was the last time the “DISK05.NRG” file, which contains the creation file for the derivative version of “Take a Dive,” was modified. Additionally, my analysis concludes the CD-ROM that contained this file was created (burned) on September 9, 1999, and could not have been subsequently burned (i.e. no new material could have been added) after that date. The totality of the information available to me supports Mr. Pringle’s claim of creating the DISK05.NRG file and CD-ROM in 1999. The manufacturing date of the CD-ROM itself (Feb 1999) and the date of his purchase of EDM (May 1999) along with my forensic findings, support this conclusion. None of the data or information I reviewed supports any other conclusion or otherwise refutes the authenticity of Mr. Pringle’s claim.

9. Please contact the undersigned at (210) 271-2999 or David@GallantCIS.com if you have any questions.

Sincerely yours,

David Gallant
President
GCIS, LLC
Licensed Private Investigator (TX Lic: A15633)

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CURRICULUM VITAE

David T. Gallant (USAF Retired)

President, Gallant Computer Investigative Services, LLC

EDUCATION:

- Bachelor of Science, University of the State of New York, Albany, NY, 1995
- AA, Criminal Justice, Community College of the Air Force, 1993

TRAINING RECEIVED:

- AccessData Mobile Phone Examiner Analysis, December, 2010
- New Horizons Training for CISSP Certification, May 2009
- Acquisition Data First Responder, April 2009
- AccessData Windows Forensics (Advanced), November 2005
- AccessData Boot Camp (Intermediate), June 2005
- Advanced Forensic Toolkit - Graphics Forensics, HTCIA Annual Meeting, September 2004
- Advanced SMART Forensics, HTCIA Annual Meeting, September 2004
- National Security Agency Information Security Assessment Methodology, March 2001
- Windows NT Enterprise Technologies, San Antonio, TX, August 1998
- Windows NT System Administration, San Antonio, TX, July 1998
- AFOSI Computer Intrusion Workshop, RAFB, TX, March 1997
- UNIX System Administrators Course, February 1997
- Seized Computer & Evidence Recovery Specialist Course, Federal Law Enforcement Training Center, February 1995
- AFOSI Basic Investigation's Academy, HQ AFOSI, December 1987

CERTIFICATIONS/CLEARANCES:

- AccessData Certified Instructor, July 2010
- Certified Information Systems Security Professional (CISSP), August 2009
- AccessData Certified Examiner (ACE), June 2009
- Certified Acquisition Specialist (CAS), Acquisition Data, April 2009
- Civil Process Server, Texas Supreme Court (SCH0000005005), April 2009
- Qualified Manager/Private Investigator, Texas Private Security Bureau, May 2008
- Current Top Secret Security Clearance, (Updated Jan 2006)
- National Security Agency, INFOSEC Assessment Methodology, March 2001
- Air Force Office of Special Investigations Computer Crime Investigator, June 2000
- Digital Evidence Analysis, AFOSI, May 1999

FEDERAL LAW ENFORCEMENT/INVESTIGATIONS EXPERIENCE:

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- President, GCIS, San Antonio, TX, February 2009 - Present
- Computer Security and Forensics Specialist, e-fense Inc, San Antonio, TX, January 2001 - February 2009
- Branch Chief, Computer Crime Investigation, AFOSI Detachment 401, August 1998 - January 2001
- Computer Crime Investigator, AFOSI Detachment 401, Randolph AFB, TX, August 1997 – August 1998
- Computer Crime Investigative Liaison to AFIWC/AFCERT, Kelly AFB, TX, April 1997 – August 1997
- Computer Crime Investigator, AFOSI Detachment 401, Randolph AFB, TX, June 1996 – March 1997
- Criminal Investigator, AFOSI Detachment 623, Misawa AB, Japan, August 1993 – June 1996
- Criminal Investigator, AFOSI Detachment 523, Izmir AB, Turkey, July 1991 – July 1993
- Criminal Investigator, AFOSI Detachment 430, Pease AFB, NH, August 1987 – June 1990

EXPERT WITNESS QUALIFICATIONS:

- Qualified as a Computer Forensics Expert, U.S. v. Sean Block, Western District of Texas, May 2009
- Qualified as a Computer Forensics Expert, U.S. v. Mackey, Brooks AFB, TX, December 2000

EXPERT CONSULTATION/TESTIMONY:

Date:	Name:	Type:
October 2010	State of Texas v. Paul Lamarre	Defense Computer Forensics Consultant
August 2009	United States v. Greg Maggio	Defense Expert Witness
August 2009	United States v. Jeremy Parten	Defense Expert Witness
May 2009	United States v. Sean Block	Defense Expert Witness
March 2009	United States v. Tami Escher	Appointed Defense Computer Forensic Consultant
March 2009	State of Texas v. Rick Carden	Defense Expert Witness
March 2008	Steves & Sons v. Trinity Glass	Expert Witness Deposition
March 2008	Johnson v. Centerpoint Inc., et. al.	Arkansas Public Utility Commission, Little Rock, AR
October 2006	United States v. Nieland	Appointed Defense Computer Forensic Consultant
August 2005	United States v. Miller	Appointed Defense Computer Forensic Consultant
October 2003	United States v. Bresnahan	Appointed Defense Computer Forensic Consultant
December 2000	United States v. Mackey	Prosecution Expert Witness

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LECTURES/TRAINING I HAVE PROVIDED:

Date:	Organization/Course:
Mar 2011	New Horizons Computer Learning Center CISSP Prep Course San Angelo, TX
Feb 2011	New Horizons Computer Learning Center CISSP Prep Course San Angelo, TX
Feb 2011 Cases	Texas Bar Association Certified MCLE - Computer Forensics in Criminal Defense Windcrest, TX
Jan 2011	Texas Bar Association Certified MCLE - Electronic Discovery and Computer Forensics Windcrest, TX
Nov 2010	A Prioritized Response to Compromised Computer IEEE Computer Society, San Antonio, TX
Oct 2010	Introduction to Electronic Discovery Data Collection Hughes, Hubbard, & Reed, LLP New York, NY
Sept 2010	New Horizons Computer Learning Center CISSP Prep Course San Antonio, TX
Aug 2010	AccessData Forensic Toolkit BootCamp Sterling, VA (Live Online Training Format)
July 2010	New Horizons Computer Learning Center CISSP Prep Course San Antonio, TX
June 2010	The Association of Information Technology Professionals (AITP) San Antonio, TX
April 2010	AccessData Forensic Toolkit BootCamp Sterling, VA (Live Online Training Format)
March 2010	AccessData Forensic Toolkit BootCamp Denver, CO
February 2010	AccessData Forensic Toolkit BootCamp Bellevue, WA

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February 2010	A Prioritized Response to Compromised Computer Leander Independent School District IT Staff
February 2010	Computer Security for Educators; Internet Safety for Children Leander Independent School District, Continuous Improvement Process
January 2010	New Horizons Computer Learning Center CISSP Prep Course San Antonio, TX
December 2009	AccessData Forensic Toolkit BootCamp Lindon, UT (Live Online Training Format)
October 2009	New Horizons Computer Learning Center CISSP Prep Course San Antonio, TX
September 2009	AccessData Forensic Toolkit BootCamp Orlando, FL
August 2009	AccessData Forensic Toolkit BootCamp (Assistant Instructor) Sterling, VA
June 2009	New Horizon's Computer Learning Center SpecTECHular Responding to a Computer Incident: Are You Ready?
February 2009	Alamo Chapter of the Armed Forces Communications and Electronics Association (AFCEA) A Prioritized Response to Compromised Computer
December 2008	Veteran's Administration Law Enforcement Training Center, Little Rock, AR Helix Three-Day Incident Response Course
November 2008	San Antonio North Chamber of Commerce Technology Counsel Previewing, Securing and Preserving Digital Evidence
August 2008	Central Michigan University, Mt. Pleasant, MI Helix Three-Day Incident Response Course
June 2008	New Horizon's Computer Learning Center, San Antonio, TX Securing Volatile Computer Evidence with Helix Seminar
April 2008	New Horizon's Computer Learning Center, San Antonio, TX Securing Volatile Computer Evidence with Helix Seminar
April 2008	Optimists Club of San Antonio, San Antonio, TX Computer Forensic Issues in the Workplace

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November 2007 S.E.A.R.C.H., Sacramento, CA
Helix Three-Day Incident Response Course

April 2007 San Antonio Criminal Defense Lawyers Association
CLE: Computer Forensics in Defense Cases

November 2006 Maine Licensed Private Investigators Association Annual Meeting
CLE: Electronic Discovery and Computer Forensics

November 2006 Venable, LLP, Washington, DC
CLE: Electronic Discovery and Computer Forensics

October 2006 Langley & Banack, Inc., San Antonio, TX
CLE: Electronic Discovery and Computer Forensics

October 2006 Ball & Weed, LLP, San Antonio, TX
CLE: Electronic Discovery and Computer Forensics

September 2006 McManus, Schor, Asmar, & Darden LLP, Washington, DC
CLE: Electronic Discovery and Computer Forensics

July 2006 Veteran's Administration Law Enforcement Training Center, Little Rock, AR
Helix Three-Day Incident Response & Forensics Course

March 2006 San Antonio Area Computer Crime Investigators' Group
Using Helix to perform Incident Response/Forensic Imaging of a Live System

March 2006 University of Texas, San Antonio, IS 4483, Cyber Forensics (Senior Level)
Computer Forensics from a Government/Law Enforcement Perspective

June 2005 Austin Police Department, High Tech Crimes Unit, Austin, TX
Two-Day Computer Incident Response Training

June 2004 Veteran's Administration Law Enforcement Training Center, Little Rock, AR
Introduction to Computer Search and Seizure

April 2004 Veteran's Administration Law Enforcement Training Center, Little Rock, AR
Introduction to Computer Search and Seizure

August 2003 University of Texas, San Antonio, TX
Computer Crime Investigations

June 2002 Library of Congress, Washington, DC
Two-Day Computer Incident Response Training

August 2002 Sector 5 Global Summit, Washington, DC
Panel Discussion – Critical Infrastructure Disaster Recovery Planning

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- April 2002 Information Technology Executive Committee (ITEC), San Antonio, TX
Panel Discussion – Protecting Critical Infrastructure
- March 2002 American Water Works Association (AWWA), Buffalo, NY
Protecting Critical Infrastructure from Computer Hackers
- August 1998 AFOSI Computer Crime Investigators' Annual Training, Dam Neck, VA
Investigating Computer Crimes
- October 1997 San Antonio Area Forensics Seminar, Randolph AFB, TX
Computer and Internet Crimes

PUBLISHED WORKS:

- February 2010 Protecting Yourself on Facebook, North San Antonio Chamber of Commerce
Technology News You Can Use
- February 2009 Are You Prepared to Respond to a Serious Computer Compromise?, North San Antonio
Chamber of Commerce Technology News You Can Use
- January 2009 Follow-up to Experts on Computer Forensics, A Defense Counsel's Ally, SA Lawyer
- November 2008 Experts on Computer Forensics, A Defense Counsel's Ally, San Antonio Lawyer
- October 2008 Password Security, North San Antonio Chamber of Commerce Technology News You
Can Use

COMPUTER FORENSICS/COMPUTER SECURITY EXPERIENCE:

- Qualified as a computer forensic expert in federal court
- 22+ years total investigative experience
- 14+ years as a Federal Agent with the Air Force Office of Special Investigations (AFOSI)
- 15+ years of computer forensic examinations using numerous industry standard tools and techniques. Cases investigated range from child pornography, use of the Internet to solicit sex from minors, crimes against persons, homicides, fraud, threats, corporate espionage, family law issues, theft of proprietary data, malicious attacks and system abuse

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- Investigation of large-scale network attacks that led to successful prosecutions
- Computer and physical penetration tests for several Fortune-500 companies
- Design and implementation of security policies for several companies
- Planned and executed electronic discovery efforts for significant civil litigations
- Reviewer, Journal of Digital Forensic Practice, February 2008 - Present

PROFESSIONAL ASSOCIATION MEMBERSHIPS:

- Association of Former AFOSI Special Agents (AFOSISA)
- North San Antonio Chamber of Commerce Technology Committee
- Texas Association of Licensed Investigators

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Tag 2 Label

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=====

ABILENE POLICE DEPARTMENT
 CRIME/INCIDENT REPORT
 ABILENE, TAYLOR COUNTY, TEXAS

=====

Reported Date: 10/19/00 Time: 13:31 Case: 00-018940 Page: 1
 Code: 30.02 PC Crime: BURGLARY Class: 050220
 Occurrence Date: 10/14/00-10/19/00 Day: SATURDAY -THURSDAY Time: 21:00-
 Status: IN INACTIVE Closing Officer:
 Location: 490 N. PIONEER DR., AB RD: 34
 STORE/LOCK STORAGE UNITS / 3F

===== INVOLVED PERSONS =====

VICTIM-1: PRINGLE BRYAN DANIEL DOB: 06/04/1973 Race: W Sex: M
 1010 S. WILLIS ST., AB
 Apt: State: TX Zip: Phone: 915 665-7547 Adu/Juv: A
 POB: Hair: BRO Eye: BRO Hgt: 603 Wgt: Bld:
 Business Name: SELF-EMPLOYED
 ABILENE, TX Phone: 915 698-6368

===== PROPERTY =====

Item Number: 0001	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand:	Model:
Serial:		Group Serial:		
Descr: GLYPHTECHNOLOGES RACK 6"X2'X2', BLK	Qty: 1	Value: 700		
Item Number: 0002	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand:	Model:
Serial:		Group Serial:		
Descr: SYMMETRIX COMPRESSOR, BLUE	Qty: 1	Value: 600		
Item Number: 0003	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand: SONY	Model:
Serial:		Group Serial:		
Descr: DAT MACHINE, BLK	Qty: 1	Value: 2000		
Item Number: 0004	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand:	Model:
Serial:		Group Serial:		
Descr: KURZWEIL RIBBON (MUSIC EQUIP CONTROLLER)	Qty: 1	Value: 1000		
Item Number: 0005	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand:	Model:
Serial:		Group Serial:		
Descr: SURGER PROTECTOR "JUICE GOOSE "	Qty: 2	Value: 600		
Item Number: 0006	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand:	Model:
Serial:		Group Serial:		
Descr: DIGITECH FX PROCESSOR	Qty: 1	Value: 2000		
Item Number: 0007	Evid/Cust: N			
Property Type: S	Cat: M	Article: 1050	Brand:	Model: ASR/10
Serial:		Group Serial:		
Descr: LENSONIQ KEYBOARD W/DIGITAL INPUT	Qty: 1	Value: 5000		

=====

Reporting Officer: HARTMANKOK JE Number: 000422 Date: 10/19/00 Time: 13:31
 Typed by: BEAL Number: CIV545 Date: 10/19/00 Time: 22:39
 Approving Officer: BEAL Number: CIV545 Date: 10/19/00 Time: 22:47

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=====
S t a n d a r d C o n t i n u a t i o P a g e
=====

Reported Date: 10/19/00 Time: 13:31 Case: 00-018940 Page: 2
Code: 30.02 PC Crime: BURGLARY Class: 050220

Item Number: 0008 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model:
Serial: Group Serial:
Descr: IGLOO COOLER, 5 QT, ORANGE/WHITE Qty: 1 Value: 500

=====
NARRATIVE
=====

NARRATIVE TAPED: NO REPORT WRITING TIME: CHECKED BY: BARBIAN/099
VEHICLES ENTERED TCIC: STOLEN PROPERTY ENTERED TCIC BY ITEM NO:
WEATHER CONDITION: SUSPECTS ENTERED TCIC BY NO:
WHO PRONOUNCED DEATH: TIME: DATE:
AUTOPSY ORDERED: ORDERED BY:
VICTIM TAKEN TO: TRANSPORTED BY:
CONDITION: DESCRIBE INJURIES:

=====
THE VICTIM REPORTED THAT AN UNKNOWN SUSPECT TOOK SEVERAL ITEMS OF MUSIC
EQUIPMENT FROM HIS STORAGE UNIT. NO FORCED ENTRY WAS MADE. TOTAL VALUE WAS
\$12,400.00.
=====

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From: support@verbatim.com <support@verbatim.com.mx>
Subject: **re: Case # 60326 - Re: CD Serial Number - Date Manufactured and sold Needed ASAP**
Date: March 17, 2011 1:02:27 PM CDT
To: David Gallant
Reply-To: support@verbatim.com

Hi David,

Thank you for contacting Verbatim Technical Support.

This product, 94328, has been out of production since late 1999 and the last shipment to a distributor was 29-Dec-2003. The 94328 was manufactured in Taiwan, the serial number (9E24F221861) indicates that this particular disc was manufactured on 24-Feb-1999.

If you need any further assistance please call us on: 646-537-3411 and we will be happy to assist you.

Regards,

Verbatim Technical Support.

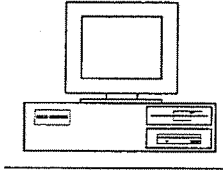
Confidential: this document is intended for the use of the intended recipient(s) only and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited.



Giebler Enterprises

26 Crestview Drive, Phoenixville, PA 19460

(610) 933-0332 Fax: (610) 933-0395
Terminal # B237990065501



RECEIPT

Date: 05-18-1999

Customer: Bryan D. Pringle

Customer # 03998

Card Number: 4600036902842038

Expiration Date: 0301

Sales Amount: \$34.95

Authorization: 106351

Visa

Customer Copy

Thank you for your business.

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From: Tal Dickstein [tdickstein@loeb.com]
Sent: Tuesday, August 16, 2011 9:35 PM
To: 'Ryan Greely'
Cc: Dunn, Katharine N.; Dickie, Dean A.; 'Ira Gould Esq.'; 'George Hampton'; Barry Slotnick; 'Jonathan.Pink@bryancave.com'; 'burrow@caldwell-leslie.com'; 'mackenzie@caldwell-leslie.com'; Koppenhoefer, Kathleen E.; Vernon, Joseph G.; 'Kara Cenar'
Subject: RE: Pringle v. Adams

Ryan,

Thank you for your response. However, you continue to refuse to provide the most basic information about the history and status of Mr. Pringle's relevant electronically stored information, and the circumstances under which that information was apparently disposed of. Lengthy recitations of your client's factual contentions, all of which are disputed, cannot hide this fact.

Most glaring is your omission of any reference to the computer equipment Mr. Pringle used in 2010. Even assuming that your representation that Mr. Pringle never heard the song "I Gotta Feeling" until February 2010 were credible – which it is not given the allegations of widespread dissemination and popularity of the song – the computer equipment Mr. Pringle used from February 2010 to 2011 is highly relevant. Your position that the only relevant computer files are on the two NRG discs given to Mr. Gallant is belied by the uncontroverted fact that Mr. Pringle downloaded and manipulated Black Eyed Peas vocals in 2009 or 2010 and posted a song file containing those vocals to the Internet in 2010. The files on Mr. Pringle's 2009/2010 computer equipment likely contain temporary internet files and metadata showing, among other things, where Mr. Pringle obtained the Black Eyed Peas' vocals and what other music of the Black Eyed Peas he obtained. These files are directly relevant to whether Mr. Pringle in fact created 'Take a Dive' Dance Version using Black Eyed Peas' music that he obtained in 2009 or 2010, not in 1999. Contrary to your suggestion, we are not asking Mr. Pringle to re-create any sound files. At this time, we are simply asking you to identify:

- (i) what computer equipment (make and model) Mr. Pringle used in 2010;
- (ii) the dates on which that equipment was first used and when it ceased being used;
- (iii) whether any backups of this equipment exist, and if so, when they will be produced for inspection;
- (iv) the dates on which that equipment was disposed of;
- (v) if not disposed of, when the equipment will be produced for inspection.

Absent answers directly responsive to these specific questions, we will assume that Mr. Pringle destroyed this evidence after he reasonably should have anticipated litigation, and thus after he had a duty to preserve such evidence.

With respect to Mr. Pringle's 2011 hard drive, it appears that Mr. Pringle decided to backup only what he subjectively deemed to be "important" data files, and to dispose of other relevant electronic evidence while this litigation was pending, including metadata and temporary internet files. This was highly improper, especially in light of defendants' repeated requests, going back to as early as July 2010, that all of Mr. Pringle's computer equipment be preserved. Nevertheless, we ask that you please inform us when you expect the hard drive to be returned from the manufacturer and that you make that hard

EXHIBIT B

drive available for inspection.

With respect to Mr. Pringle's 2009 hard drive, although we understand that you would like us to accept without challenge your representation that Mr. Pringle never heard "I Gotta Feeling" until February 2010, and that nothing from 2009 is relevant, we are entitled to test that assertion through discovery, including through the production of electronically stored information. Unfortunately, you now represent that at some unspecified time Mr. Pringle discarded the hard drive that he used during 2009. This likely destroyed relevant evidence that would have shown Mr. Pringle's earlier awareness of "I Gotta Feeling", which is relevant to, among other things, defendants' laches defenses, not to mention Mr. Pringle's downloading and manipulation of Black Eyed Peas music and thus the date on which he actually created 'Take a Dive' Dance Version. We therefore ask that you please identify:

- (i) what computer equipment (make and model) Mr. Pringle used in 2009;
- (ii) the dates on which that equipment was first used and when they ceased being used;
- (iii) the dates on which that equipment was discarded;
- (iv) whether any backups of that equipment exist, and if so, when they will be produced for inspection.

With respect to Mr. Pringle's "historical practice of discarding hard drives", please identify during what time period that practice was followed. Furthermore, if Mr. Pringle in fact followed a practice of backing up the files on each successive hard drive, then there should exist files dating back to Mr. Pringle's alleged creation of 'Take a Dive' Dance Version in 1999. We ask that you please produce those files for inspection or explain why they will not be produced.

Lastly, as you represent to have withheld on the basis of privilege certain files from the backup DVD produced for inspection on August 8th, please produce a privilege log for these files so that we can assess your privilege claim.

In sum, I hope that you will take this opportunity to simply answer the questions we have posed above and not continue to obfuscate through rhetorical argument. As you know, these questions call for precisely the type of basic information regarding Mr. Pringle's ESI that has been repeatedly requested, including during the parties Rule 26(f) conference, yet has been improperly withheld.

Tal

From: Ryan Greely [mailto:rgreely@igouldlaw.com]
Sent: Tuesday, August 16, 2011 7:14 PM
To: Tal Dickstein
Cc: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; Barry Slotnick; Jonathan.Pink@bryancave.com; burrow@caldwell-leslie.com; mackenzie@caldwell-leslie.com; 'Koppenhoefer, Kathleen E.'; 'Vernon, Joseph G.'; 'Kara Cenar'
Subject: RE: Pringle v. Adams

Tal,

I apologize for not responding sooner, but I was busy with the Plaintiffs' depositions in the Batts matter last Thursday and Friday and with responding to the numerous discovery requests in both matters over the weekend.

Let us put this matter to bed once and for all:

1. Mr. Pringle did not intentionally alter, delete or withhold any of the files which he has maintained on his computer and repeatedly suggesting that he did is simply disingenuous.

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2. Based on all of the information available to us it is and we expect it to be uncontroverted that prior to sometime in late February 2010 Mr. Pringle had never learned of nor heard the Black eyed Peas song "I Gotta Feeling"; If you have evidence to the contrary please advise. If you do not, then please cease with the wild speculation.
3. Mr. Pringle filed suit in this matter in late October 2010 and deposited all of the relevant music-related computer files in his possession and control at that time with a forensic expert, who has held them continuously since mid to late 2010. Those facts likewise will be uncontroverted by any individual or document of which we are aware. If you have any evidence to the contrary please provide it to us now.
4. Contrary to your bold assertion regarding Mr. Pringle's conduct, Mr. Pringle never posted "multiple" songs on the internet. Mr. Pringle did not continually post any version of "Take A Dive" on YouTube. Mr. Pringle did post one song on his own website in late 2010 or 2011 which was "Take A Dive" with the Black Eyed Peas' vocals laid over the track. The song file which was used to do that posting was requested by counsel for Mr. Pringle as a attorney-client work product and provided to the attorneys for the Black Eyed Peas during the confidential settlement discussions prior to this litigation commencing. The Federal Rules of Civil Procedure do not require a litigant to recreate something that was done for the express purpose of settlement discussions and provided as a courtesy to opposing counsel.
5. Historically, Mr. Pringle has had a practice of discarding hard drives whenever they were degraded or defective and had to be replaced. However, it is and was his customary practice to copy the important data files from the hard drives being replaced to each new hard drive. In so doing he follows the instructions of the manufacturer. As we have previously explained, Mr. Pringle experienced a defect on the hard drive which he installed in and around early 2011. Mr. Pringle as is his custom, saved the data files prior to returning the defective hard drive to the manufacturer in order to obtain warranty coverage for the defective hard drive. The data files that were on the returned hard drive were copied around mid 2011, and were provided to Mr. Gallant and turned over by him to your expert on August 8, 2011. Mr. Gallant, continues to have custody and control over Mr. Pringle's relevant song data files and has maintained them in the same condition they were in when copied and delivered.
6. Mr. Pringle surely cannot be expected to have saved irrelevant defective and corrupted hard drives, motherboards and other computer components going back years before he was aware of the existence of "I Gotta Feeling" or had heard the song. Consequently, your suggestion that somehow Mr. Pringle violated the Federal Rules of Civil Procedure by discarding an irrelevant and defective hard drive in 2009 long before he had ever heard the Black Eyed Peas song or before he even contemplated filing any lawsuit is totally specious; moreover, Mr. Pringle cannot control the functional properties of a hard drive. Computer hard drives are fallible and Mr. Pringle cannot be expected to ensure that his hard drive operates perfectly forever. Mr. Pringle has taken reasonable steps to preserve the irrelevant data files which were on the 2011 hard drive as of the time it ceased working. Mr. Pringle however, cannot as a matter of law be expected to anticipate that a computer component which became defective, degraded or inoperable in 2009 had to be saved just in case sometime down the road someone might steal music he wrote 10 years ago. The logic of the contention is disingenuous, and warrants no further discussion. Nothing in the Federal Rules imposes any such requirement. After a reasonable inquiry and diligent search we are unaware of any relevant data or document which suggests that files located on the defective 2011 hard drive which was returned had anything to do with the creation of "Take A Dive." If you have any such documentation or data please provide it. Rank speculation and theoretical posturing however, is nothing more than a fishing expedition launched in the vain misguided hope of finding anything which the Defendants might use to controvert the date of the creation of "Take A Dive."
7. It is also uncontroverted that many years ago Mr. Pringle experienced a burglary which resulted *inter alia* in the loss of his personal property including the computer and hard drive that were most likely used by him in creating "Take a Dive." We have a copy of the Police Report which was filed in October 2000, at the time of the theft and

have previously provided a copy to you. Surely you are not suggesting that the theft of his computer, hard drive and various other personal property 10 years ago somehow violates the Federal rules of Civil Procedure regarding electronic discovery or requests for inspection. Again, if you have evidence that the referenced theft did not occur or that the contemporaneous police report is false, please provide us with such evidence. If you do not have any such evidence we respectfully suggest you move on and analyze that which has been provided. So far as we are aware there was no request by any Defendant to inspect any hard drive of Mr. Pringle which dates back to the year of creation of "Take A Dive (Dance Version)," around 1999, 10 years before "I Gotta Feeling" was ever released publically.

8. The mp3 files of "Take A Dive (Dance Version)" (sent to the Copyright Office), the individual tracks for "Take A Dive (Dance Version)" located on the "Promo Photos" CD-ROM, as well as, the mp3 of "Take A Dive" (Dance Version) with the alleged manipulated Black Eyed Peas' "I Gotta Feeling" vocals (provided to the court), were turned over to the Attorneys for the Black eyed Peas prior to the commencement of this lawsuit. Further the "Take A Dive" (Dance Version) with the Black Eyed Peas' vocals, is simply comprised of Mr. Pringle's 1999 "Take A Dive" (Dance Version) music and the "I Gotta Feeling" vocals sped up from 128 beats per minute to 130 beats per minute. This alleged manipulation can be duplicated again if defense counsel has lost or otherwise mislaid the material previously supplied to them by counsel. As the Defense must already be in possession of the original Black Eyed Peas vocal tracks from "I Gotta Feeling," it is certainly easy enough for the Defendants' experts to review the material provided to counsel for the Black Eyed Peas prior to the litigation and compare it to the original tracks to see whether Mr. Pringle did anything more than speed up the beats and lay them alongside "Take a Dive (Dance Version)." Surely you can't be suggesting that Mr. Pringle downloaded the original tracks to "I Gotta Feeling" in 1999, or that the Defendants do not have access to their own allegedly original music?

9. It is likewise our understanding based upon all of the information and materials which have been available to us that the data files relating to the creation of "Take A Dive (Dance Version)" were on hard drives that became inaccessible more than ten years before the institution of this lawsuit. Thus, none of the data files in Mr. Pringle's possession as of the filing of this lawsuit in late October 2010 contained original data relating to the creation of "Take A Dive" or "Take A Dive (Dance Version)."

10. The only surviving relevant creation data files relating to "Take A Dive" (and any derivative versions) are now and have been those which were copied some time ago onto the two CD-ROM discs which Mr. Pringle provided to Mr. Gallant in mid to late 2010 and subsequently made available to the Defendants expert in San Antonio, Texas on August 8, 2011. Consequently every relevant data file which contains any reference to "Take A Dive" (and any derivative versions) has been provided to the Defendants. No original surviving relevant data pertaining to the creation of "Take A Dive" (and any derivative versions) has been excluded from the Defendants expert.

11. Finally, it is uncontroverted that at the time in 2011 the Defendants asked to inspect Mr. Pringle's 2009 hard drive, no 2009 hard drive which Mr. Pringle used during that calendar year was in existence. Thus no 2009 hard drive was available for inspection by anyone. As there was no 2009 hard drive in existence in 2011, Mr. Pringle had no such hard drive to provide. *A fortiori*, since there was no such hard drive in his possession or control, Mr. Pringle cannot as a matter of law be said to have "spoiled" any evidence and cannot have been in violation of the Federal Rules of Civil Procedure. The fact that Mr. Pringle sent a degraded, defective 2011 hard drive to the manufacturer for a warranty replacement or repair which contained nothing relating to this lawsuit or the creation of the song at issue simply cannot form the basis of any legitimate claim that he has spoiled "evidence" relating to the creation of "Take A Dive" or any derivative.

We trust this explanation regarding Mr. Pringle's practice and the details of his actions puts this matter to rest and dissuades you from pursuing a frivolous "fishing expedition" grounded on the speculative suggestion that his 1999 and previously registered derivative compositions somehow were created after he first learned of the existence of the song at issue (in and around late February 2010).

Ryan Greely

GOULD LAW GROUP

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From: Tal Dickstein [mailto:tdickstein@loeb.com]
Sent: Wednesday, August 10, 2011 2:04 PM
To: 'Ryan Greely'
Cc: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; Barry Slotnick; 'Jonathan.Pink@bryancave.com'; 'burrow@caldwell-leslie.com'; 'mackenzie@caldwell-leslie.com'; 'Koppenhoefer, Kathleen E.'; 'Vernon, Joseph G.'; 'Kara Cenar'
Subject: RE: Pringle v. Adams

Ryan,

Rather than be dragged into a wasteful rhetorical exchange, I will simply note that you are refusing to provide information regarding your client's electronically stored information in violation of the Federal Rules of Civil Procedure and Judge Tucker's instruction that counsel meet and confer regarding discovery issues. While your email below asserts that you have produced some "non-privileged relevant data from Pringle's damaged hard drive", which falls far short of a forensic copy of that hard drive, you previously explained that this hard drive was not used by Mr. Pringle until January 2011. You have therefore not provided *any* information with respect to the hard drives that Mr. Pringle used during 2009 and 2010. Mr. Pringle's ESI created during that time period is unquestionably relevant, as that is when "I Gotta Feeling" was released, Mr. Pringle downloaded and manipulated Black Eyed Peas music and posted songs containing that music to the internet, and created MP3s of "Take a Dive" that were submitted to the Copyright Office and to the Court in this litigation. I therefore urge you to provide, by the end of this week, the information requested below with respect to the hard drives Mr. Pringle used in 2009 and 2010.

Very truly yours,

Tal

From: Ryan Greely [mailto:rgreely@igouldlaw.com]
Sent: Wednesday, August 10, 2011 11:47 AM
To: Tal Dickstein
Cc: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; Barry Slotnick; 'Jonathan.Pink@bryancave.com'; 'burrow@caldwell-leslie.com'; 'mackenzie@caldwell-leslie.com'; 'Koppenhoefer, Kathleen E.'; 'Vernon, Joseph G.'

11/14/2011

Subject: RE: Pringle v. Adams

Tal,

Despite the fact that we have provided appropriate and accurate explanations regarding Mr. Pringle's computer it is evident that you are determined to twist every representation made in order justify your accusations of both spoliation and copying by plaintiff. Because we have already addressed the substance of all of your questions and concerns, we do not see the value in continuing this back and forth.

We have already provided non-privileged relevant data from Mr. Pringle's damaged hard drive Monday and it was copied without incident by your expert. Further, your insistence that the lack of data from 2009 – before Mr. Pringle even retained counsel – suggests spoliation is baseless. Although it is convenient for your theory of the case, it does not comport with either the federal rules regarding preservation of evidence, nor the facts in this case. Forensic analysis of "Take a Dive" has conclusively established that it was created in 1999 – ten years before your clients released "I Gotta Feeling" and that it has not been modified since that time. Therefore nothing in 2009 is germane. All relevant and discoverable evidence has been produced by us and copied by you.

Incidentally, the gentleman sent from your expert's office to copy the data told me that he did not even receive the assignment to copy and inspect the data until Friday afternoon, which calls into question your claims about the "longstanding" travel arrangements made by your expert.

We have nothing further to add to this discussion.

Ryan

From: Tal Dickstein [mailto:tdickstein@loeb.com]

Sent: Monday, August 08, 2011 2:20 PM

To: 'rgreely@igouldlaw.com'

Cc: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; Barry Slotnick; 'Jonathan.Pink@bryancave.com'; 'burrow@caldwell-leslie.com'; 'mackenzie@caldwell-leslie.com'; 'Koppenhoefer, Kathleen E.'; 'Vernon, Joseph G.'

Subject: RE: Pringle v. Adams

Ryan,

Thank you for your email of today's date. Unfortunately, it only heightens our concern that Mr. Pringle has spoliated evidence of his downloading and manipulation of Black Eyed Peas music and of his fraudulent backdating of evidence that you have submitted to the Court.

With respect to Mr. Pringle's current hard drive that allegedly malfunctioned and was sent away for repair just this past month, your explanation is unclear, as you state that the drive was not used until 2011, but also that the drive could not contain any data from prior to January 2010. I find it surprising that Mr. Pringle would have purchased a hard drive in January 2010 but not used it until 2011, over a year later, as your email seems to suggest. Your email also discloses for the first time that Mr. Pringle allegedly backed up the contents of this allegedly malfunctioning hard drive onto CD-ROMs before sending the drive away for repair, even though our inspection request specifically included any hard drive backups. We assume that Mr. Pringle did not conduct this backup in a forensically sound manner, including preserving all metadata and unallocated file space on the hard drive. If that is correct, then Mr. Pringle has likely spoliated critical evidence. If that is not correct, please provide the details of Mr. Pringle's forensic backup process. In either event, we ask that you inform us as soon as the hard drive is returned from the manufacturer and that you preserve both the hard drive and the CD-ROM backups for inspection. We also again

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ask that you provide the date on which the hard drive allegedly ceased functioning, the date on which Mr. Pringle sent the hard drive to the manufacturer, and copies of all related documentation.

While your email focuses almost exclusively on Mr. Pringle's current hard drive and the NRG discs that Mr. Pringle delivered to Mr. Gallant, you have provided no details or explanation as to the history and current status of Mr. Pringle's prior hard drives and backups that he used in 2009 and/or 2010. These hard drives likely contain evidence of Mr. Pringle's downloading and manipulation of Black Eyed Peas music and backdating of electronic evidence submitted to the Court, as well as evidence of Mr. Pringle's creation of the alleged sound recording submitted to the Copyright Office in 2010. Thus, contrary to your suggestion that we are trying to "deflect the attention from what was or was not created in 1999" that is precisely the issue with which we are concerned and as to which Mr. Pringle's 2009/2010 hard drives are directly relevant. We therefore again ask that you identify precisely what computer hard drives or other storage drives Mr. Pringle has used from January 2009 to the present (including providing the "purchase orders and receipts" referenced in your email), the time period during which each of those drives was in use, which drives have been discarded and on what dates, and which drives or backups Mr. Pringle still has in his possession or control. This is precisely the type of basic information about Mr. Pringle's electronically stored information that defendants have repeatedly requested, including during the February 2011 Rule 26(f) conference, yet has been improperly withheld. We ask that you provide it now.

Very truly yours,

Tal

From: rgreely@igouldlaw.com [mailto:rgreely@igouldlaw.com]

Sent: Monday, August 08, 2011 11:46 AM

To: Tal Dickstein

Cc: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; Barry Slotnick; 'Jonathan.Pink@bryancave.com'; 'burrow@caldwell-leslie.com'; 'mackenzie@caldwell-leslie.com'; 'Koppenhoefer, Kathleen E.'; 'Vernon, Joseph G.'

Subject: Re: Pringle v. Adams

Tal,

Thank you for your email from yesterday. I am writing to correct the several inaccurate and erroneous statements contained within the body of your message.

First, your expert could easily have cancelled the flight and hotel and re-scheduled the inspection without any penalty. Consequently your suggestion that your expert was already scheduled to travel does not mean that the time and expense of the trip could not have been deferred to another day. We are however, happy to proceed with the inspection on Monday since all of Mr. Pringle's "critical evidence" relating to this lawsuit is now and has at all pertinent times been in the possession of Mr. Gallant.

Second your statement that there has been a spoliation of evidence is incorrect and intentionally misleading. We say this for a number of reasons, including without limitation the following: (i) The hard drive which crashed and was returned for warranty service was not purchased until January 2010 from Amazon and was not actually used until 2011, so it could not contain evidence of any related musical activity by Mr. Pringle prior to January 2010; (ii) the hard drive which was returned to the manufacturer was under warranty and the data on the hard drive was copied by Mr. Pringle prior to its return to Western Digital; moreover, the non-privileged data if any, which was on that hard drive will be made available to you once it has been properly vetted by counsel so that no privileged communications or work product will be inadvertently turned over; and (iii) the only relevant data or information contained on the hard drive which was installed in 2011 relates to communications concerning this litigation and never contained any original musical tracks created by Mr. Pringle. All of that "critical evidence" is and has been in Mr. Gallant's possession. As we stated before, the only data in the files of that hard drive were the comparisons requested by Mr. Pringle's counsel for use at trial or for purposes of settlement, which in both cases constitutes confidential privileged information that is unquestionably unavailable for any inspection by the defendants' expert.

Third, contrary to your bald assertion, Mr. Pringle has taken appropriate steps to preserve and protect his original

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musical compositions by placing them in the care and custody of a forensic expert and making sure to back up the files on CD-ROMs located on the damaged hard drive before returning it for warranty service. Thus your statement that "critical evidence" has been lost or destroyed is false and has no basis in fact.

Fourth, you complain about Mr. Pringle's business practice of periodically discarding non-functioning, obsolete hard drives as somehow being in violation of the Federal Rules regarding electronic discovery. Your position again is misleading. Mr. Pringle did not consult with Mr. Gould or Mr. Greely about this case until late February 2010. Consequently his business practices are not and cannot be at issue and your complaining about them does not create any basis to move to dismiss the claim or seek sanctions. Further, so far as we are aware, no decision was made by Mr. Pringle to file suit until sometime thereafter. Thus the court rules regarding retention of evidence do not come into play until such time as Mr. Pringle made an informed decision to proceed with this case. Contemporaneously with or shortly after a decision to file suit was made, Mr. Pringle deposited his original musical compositions (critical evidence) and the method by which they were contained with Mr. Gallant, who has had sole possession and control of those materials since they were deposited with him. He did so to preserve his original music by having an expert hold the originals for safe keeping and forensic evaluation. Mr. Pringle has not accessed (or altered, or discarded) any of those works since they were so deposited. Further, as we have advised you previously, Mr. Pringle followed the manufacturer's instructions and backed up the data on the drive recently sent to Western Digital for warranty service. It was and remains his customary business practice to repair and replace computer equipment periodically and to back up any data on the hard drive before returning the drive for service, which is how reasonable people proceed. Not only was such backing up his customary practice, he followed that practice in this instance to insure that no data was lost and that it could be returned to the repaired or new hard drive upon its return.

Based on the foregoing facts, all of which can be documented by the purchase orders and receipts, which we have offered to provide (all of which dated prior to the Defense's request to view Mr. Pringle's defective hard drive), it seems that the Defense is yet again attempting to create another baseless and irrelevant collateral issue, in order to deflect the attention from what was or was not created in 1999, almost 10 years before "I Gotta a Feeling" was released by the Black Eyed Peas. Please explain to us how a hard drive which was not installed until 2011 and not even purchased until 2010 constitutes "critical evidence" of some allegedly and "purely speculative" nefarious copying by Bryan Pringle of "I Gotta a Feeling" in 2009? The fact remains that it doesn't. Defendants have no idea what they are looking for. No evidence exists to even suggest that Mr. Pringle engaged in or had any evidence relating to your speculative allegations of copying by Mr. Pringle, which makes your request a fishing expedition. Your conduct appears to be designed to harass the plaintiff and preclude him from exercising his legal rights under the Copyright Act and the attempt to divert attention from the copyrighted 1999 works of Mr. Pringle is too transparent to warrant further discussion.

Ryan

-----Original Message-----

From: Tal Dickstein [mailto:tdickstein@loeb.com]

Sent: Sunday, August 7, 2011 03:34 PM

To: 'rgreely@igouldlaw.com'

Cc: "Dunn, Katharine N.", "Dean Dickie", "Ira Gould Esq.", "George Hampton", 'Barry Slotnick', 'Jonathan.Pink@bryancave.com', 'burrow@caldwell-leslie.com', 'mackenzie@caldwell-leslie.com', "Koppenhoefer, Kathleen E.", "Vernon, Joseph G."

Subject: RE: Pringle v. Adams

Ryan,

As an initial matter, if you were somehow confused by anything in my original July 27 email – which clearly requested inspection of all of "Mr. Pringle's computer hard drive(s) that he has used from 2009 to the present, and all backups thereof" – it would have been appropriate to ask for clarification at that time, not over the weekend immediately prior to the computer inspection scheduled for Monday half way across the country in Texas. Your belated indication that no computer hard drives will be produced for inspection on Monday is highly prejudicial, as our expert is already scheduled to travel to perform the inspection. We will therefore proceed with the inspection of the NRG discs and ASR10 beginning on Monday as scheduled. We reserve the right, however, to seek recovery of all costs incurred in inspecting any other computer equipment at a later date.

11/14/2011

Even more importantly, however, your email raises serious concerns that Mr. Pringle has spoliated critical evidence of his downloading and manipulation of the Black Eyed Peas' music and of his fraudulent backdating of electronic evidence that has been submitted to the Court. This is even more troubling in light of defendants' repeated requests that you take appropriate steps to preserve all electronically stored information in Mr. Pringle's possession. In particular, you state that "as of August 5, 2011 Mr. Pringle did not have any computer which still contained an original motherboard, hard drive or operating software from 2009" and go on to explain that in Mr. Pringle recently sent an allegedly malfunctioning hard drive to its manufacturer for repair. This was wholly inappropriate and likely destroyed critical evidence. You attempt to justify this violation by explaining that Mr. Pringle did not realize that we had requested inspection of his current computer systems. Even if that explanation were credible – which it is not in light of my July 27 email requesting inspection of Mr. Pringle's computers used from 2009 to the present, and your prior offers to allow inspection of Mr. Pringle's computers – it would still constitute a violation of the discovery rules and the obligation to preserve evidence. Further, your offer to produce the hard drive for inspection after it has been returned from the manufacturer does nothing to mitigate this violation, as the manufacturer will not doubt alter or delete data on the hard drive as part of the repair process. Nevertheless, we ask that you inform us as soon as the hard drive is returned from the manufacturer, and that you preserve it for inspection. Please also provide the date on which this hard drive allegedly ceased functioning, the date on which Mr. Pringle sent the hard drive to the manufacturer, and copies of all related documentation.

Similarly troubling is your acknowledgement that "[i]t has been Mr. Pringle's practice to upgrade his computer hardware and replace his hard drive every 6 to 12 months. Once a new hard drive is installed Mr. Pringle typically discards the prior hard drive. As a result Mr. Pringle does not possess any hard drives which existed prior to 2010." This too is a blatant violation of Mr. Pringle's and counsel's obligation to preserve evidence. As you know that obligation attaches when litigation is first anticipated, and certainly when litigation has actually been commenced. Moreover, on several occasions, including at least as early as July 2010, defendants have reminded counsel of this obligation and specifically demanded that all of Mr. Pringle's electronically stored equipment be preserved. So that we can evaluate the scope of these violations, please identify precisely what computer hard drives Mr. Pringle has used from January 2009 to the present, the time period during which each of those hard drives were in use, which hard drives were discarded and on what dates, and which hard drives Mr. Pringle still has in his possession or control.

We reserve our rights to seek relief from the Court for these apparent discovery violations and spoliation of evidence, including monetary sanctions and dismissal of Mr. Pringle's claim.

Very truly yours,

Tal

From: rgreely@igouldlaw.com [mailto:rgreely@igouldlaw.com]

Sent: Saturday, August 06, 2011 9:01 PM

To: Tal Dickstein

Cc: Dunn, Katharine N.; Dean Dickie; Ira Gould Esq.; George Hampton; Barry Slotnick; Jonathan.Pink@bryancave.com; burrow@caldwell-leslie.com; mackenzie@caldwell-leslie.com; Koppenhoefer, Kathleen E.; Vernon, Joseph G.

Subject: Re: Pringle v. Adams

Tal,

I was a bit confused by your August 5, 2011 email request as I had understood that you wanted to inspect the NRG files and Mr. Pringle's current computer. As I re-read your email and its request asking to inspect his computer from 2009 and any backup computer (which he doesn't have), I know see that it wa:

a much broader request than I originally understood. Apparently, we did not appreciate the breadth of your request until conferring with Mr. Pringle. We are writing to you today to detail the present situation regarding your request so that that we are on the same page as to what you expect Mr. Pringle to be delivering to Mr. Gallant on Monday. The purpose of this writing is to be clear as to what Mr. Pringle has and does not have, and what he is in a position to provide for inspection on Monday, August 8, 2011. If what he is in a position to produce on Monday is insufficient for your purposes then we will need to schedule another inspection date.

We have now determined that as of August 5, 2011 Mr. Pringle did not have any computer which still contained an original motherboard, hard drive or operating software from 2009. Although Mr. Pringle does have various computer hardware components installed in his personal computer which relate back to the 2008-2009 time frame, he does not currently have a working hard drive or motherboard in his personal computer.

In early July, 2011 Mr. Pringle experienced an active alert through the Intel desktop utilities program which had been installed to monitor his computer hardware. This alert indicated a serious overheating condition, which in turn, led to a non-functioning computer. That alert was not surprising to Mr. Pringle because he had been having problems with the motherboard and hard drive in his personal computer for sometime. Immediately upon determining that neither the motherboard nor the hard drive were operating properly, he purchased new replacements, but as yet has only installed the new motherboard, choosing to wait until the other hard drive under warranty is returned. Mr. Pringle determined that the hard drive which had been purchased in 2010 and installed in 2011 was under warranty and returned it to the manufacture for warranty service. The motherboard was replaced with a new identical one purchased on line from Newegg.com. The newly purchased hard drive is available in its original box should you wish to examine it as well.

For your information, a copy of the motherboard receipt is available should you wish to review it. The defective hard drive was sent to Western Digital for appropriate warranty handling and should be returned shortly. Mr. Pringle was unaware of the date for the request to examine his current computer as opposed to an examination and inspection of the materials he used to create "Take a Dive" which is what he understood to be the nature of the inspection taking place on Monday and fully expected to have his hard drive operating at the time of an inspection.

Mr. Pringle has replaced several computer hard drives and other components in his personal computer since 2009. It has been Mr. Pringle's practice to upgrade his computer hardware and replace his hard drive every 6 to 12 months. Once a new hard drive is installed Mr. Pringle typically discards the prior hard drive. As a result Mr. Pringle does not possess any hard drives which existed prior to 2010.

As Mr. Pringle never used the hard drive which is now in the possession of Western Digital to create music in 2009, the presence or absence of that hard drive would seem to be irrelevant. However, if you wish to defer the inspection until it is returned by the manufacturer, we will certainly accommodate such a request. If you would also like to view the purchase receipts to verify the purchase dates let us know. Finally, contrary to what we assumed regarding Mr. Pringle's personal computer, we now understand that the entirety of the information contained on the current hard drive contains only attorney-client privileged files; attorney work product summaries; and specific side by side comparisons Mr. Pringle's attorneys asked him to prepare for them in the context of the confidential settlement discussions. Certainly, having learned the nature and extent of what is on his computer, we will need to redact all such privileged material once it is returned prior to any inspection of Mr. Pringle's computer.

Regardless, we can now confirm that all of Mr. Pringle's actual music files relating to the creation of the original versions of "Take A Dive" or "Take A Dive (Dance Version)," are and have been, on the two CD-ROM discs in Dave Gallant's possession since 2010. Both of these discs will be available on Monday, August 8, 2011 for inspection. Also, as previously represented, the ASR-10 keyboard will also be present for inspection on Monday the 8th.

As to any other disks in Mr. Pringle's possession that contain other NRG files not related to "Take a Dive," we never agreed to produce those and they will not be made available on Monday, as they do not bear any relevance to our client's claim or your defenses.

Let us know whether you wish to continue with the inspection on Monday or would rather conduct the inspection of the tracks, NRG files and ASR-10 in Mr. Gallant's possession once Mr. Pringle's computer available so that only one trip will be necessary. Unless we hear to the contrary, we will assume that you will want to proceed on Monday and save the computer inspection for another visit.

Ryan

-----Original Message-----

From: Tal Dickstein [mailto:tdickstein@loeb.com]

Sent: Friday, August 5, 2011 04:56 PM

To: 'Ryan Greely'

Cc: 'Dunn, Katharine N.', 'Dean Dickie', 'Ira Gould Esq.', 'George Hampton', 'Barry Slotnick', Jonathan.Pink@bryancave.com, burrow@caldwell-leslie.com, mackenzie@caldwell-leslie.com, 'Koppenhoefer, Kathleen E.', 'Vernon, Joseph G.'

Subject: Re: Pringle v. Adams

Ryan,

As you know, we have requested inspection of Mr. Pringle's computer used from 2009 to the present, and any backup thereof, as well as Mr. Pringle's other NRG backup disks you referenced during our meet and confer call. Please confirm that these items will be made available at Mr. Gallant's offices on Monday and provide the make and model of the computer and backups if any.

As of now I expect that one or two people will be attending the inspection from our side.

Tal

On Aug 5, 2011, at 4:34 PM, "Ryan Greely" <rgreely@igouldlaw.com> wrote:

Tal,

The two discs containing the "incorrect" and the "correct" NRG files respectively will be available, along with Bryan's ASR-10 keyboard, which is the same as the "vintage keyboard" Mr. Pringle referenced in his Nov. 23 letter to the Copyright Office. Mr. Pringle will be attending the inspection. Please let me know how many people will be attending on your end, so that I may inform Mr. Gallant.

Ryan

From: Tal Dickstein [mailto:tdickstein@loeb.com]

Sent: Friday, August 05, 2011 11:10 AM

To: rgreely@igouldlaw.com

Cc: Dunn, Katharine N.; Dean Dickie; Ira Gould Esq.; George Hampton; Barry Slotnick; Cenar, Kara; Jonathan.Pink@bryancave.com; burrow@caldwell-leslie.com; mackenzie@caldwell-leslie.com

Subject: RE: Pringle v. Adams

Ryan,

Can you please let me know this afternoon the types of media that will be available for inspection at Mr. Gallant's office beginning on Monday? If we do not have this information today, we may need to continue or reschedule the inspection for another day and incur additional unnecessary costs. Please also let me know whether anyone other than Mr. Gallant will be attending the inspection.

Thank you in advance for your anticipated timely response,

Tal

From: Tal Dickstein
Sent: Thursday, August 04, 2011 5:09 PM
To: rgreely@igouldlaw.com
Cc: Dunn, Katharine N.; Dean Dickie; Ira Gould Esq.; George Hampton; Barry Slotnick; Cenar, Kara; Jonathan.Pink@bryancave.com; burrow@caldwell-leslie.com; mackenzie@caldwell-leslie.com
Subject: Re: Pringle v. Adams

Ryan,

That date and time work for our expert. Depending on the type of media and volume of data, however, the inspection could take longer than Monday afternoon. Please confirm that the materials will remain available for inspection at Mr. Gallant's office on Tuesday as well.

Please also let me know as soon as you can confirm what types of media will be available for inspection so that we can ensure that we have the correct equipment. Lastly, please let me know if anyone from your side other than Mr. Gallant will be present at his offices during the inspection.

Thank you,

Tal

On Aug 4, 2011, at 12:43 PM, "Ryan Greely" w <rgreely@igouldlaw.com> wrote:

Tal,

Mr. Gallant will be available to supervise your expert's inspection at his office on Monday at 1:30pm. Please let me know if this works for you.

I will send you a follow up email to let you know the specifics of the equipment Bryan will be presenting for inspection, per your request.

Ryan

From: Ryan Greely [<mailto:rgreely@igouldlaw.com>]
Sent: Friday, July 29, 2011 3:57 PM
To: 'Tal Dickstein'; 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; 'rgreely@igouldlaw.com'
Cc: 'Barry Slotnick'; 'Cenar, Kara'; 'Jonathan.Pink@bryancave.com'; 'burrow@caldwell-leslie.com'; 'mackenzie@caldwell-leslie.com'
Subject: RE: Pringle v. Adams

Tal,

I have not been able to get a hold of our expert to find out his availability yet. Once I do, I will let you know right away – hopefully by the end of today.

Ryan

From: Tal Dickstein [mailto:tdickstein@loeb.com]
Sent: Friday, July 29, 2011 8:08 AM
To: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; 'rgreely@igouldlaw.com'
Cc: Barry Slotnick; 'Cenar, Kara'; Jonathan.Pink@bryancave.com; burrow@caldwell-leslie.com; mackenzie@caldwell-leslie.com
Subject: RE: Pringle v. Adams

Ryan,

Can you let me know today when these inspections can take place? We would like to conduct them next week, and our expert needs a day or so lead time to set up.

Thanks,

Tal

Tal Dickstein

Attorney At Law

<image001.jpg>

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From: Tal Dickstein
Sent: Wednesday, July 27, 2011 9:34 PM
To: 'Dunn, Katharine N.'; 'Dean Dickie'; 'Ira Gould Esq.'; 'George Hampton'; 'rgreely@igouldlaw.com'
Cc: Barry Slotnick; 'Cenar, Kara'; 'Pink, Jonathan Stuart (Jonathan.Pink@bryancave.com)'; 'burrow@caldwell-leslie.com'; 'pearson@caldwell-leslie.com'
Subject: Pringle v. Adams

Ryan,

Further to our discussion on Monday and Katherine's July 8 letter, please provide dates when our computer expert can inspect (i) the physical NRG disc referenced in the motion for a temporary restraining order, (ii) the "correct" physical NRG disc referenced in the preliminary injunction motion, (iii) the other physical NRG backup discs in Mr. Pringle's possession that you referenced in our meet and confer call, (iv) Mr. Pringle's computer hard drive(s) that he has used from 2009 to the present, and all backups thereof, (v) the "vintage keyboard" referenced in Mr. Pringle's November 23, 2010 email to the Copyright Office (PL0024-0025), and (vi) the ASR-10 referenced on page 3 of Ira Gould's August 30, 2010 letter to Kara Cenar.

We assume that the items in categories (i) and (ii) above are located at Mr. Gallant's office in Windcrest, Texas, and that the items in categories (iii) through (vi) are located at Mr. Pringle's home in San Antonio. If this is not the case, please let us know where these items are located and can be inspected.

Our expert is available to conduct these inspections next week and estimates them to take approximately one day at Mr. Gallant's office and one day at Mr. Pringle's residence, although the actual time required for the inspections may change depending on the volume of data and circumstances of the inspection. Please provide us dates next week when these inspections can take place.

Thank you,

Tal

Founded in 1852
by Sidney Davy Miller

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August 22, 2011

Via Email

Tal Efriam Dickstein, Esq.
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154

Re: Pringle v. William Adams, Jr., et al.
Case No. SACV10-1656 JST

Dear Tal:

I read your recent extensive exchange of emails with Ryan Greely and am writing to suggest that this discourse cease. In making this suggestion I am reminded that “people in glass houses shouldn’t throw stones” and it appears that far too much time and rhetoric has been expended on this issue. I say that because when you recently claimed that you wanted to avoid “wasteful rhetorical exchange,” it was obvious that your statement was no longer plausible. Unfortunately, it appears that you have now taken a page from Ms. Cengar’s book by making bold, absurd, speculative allegations which have no legitimate place in federal litigation.

In the referenced emails you suggested that Mr. Pringle had some obligation to preserve evidence before he even knew that your clients violated his copyright. That statement is legally deficient and absurd. You likewise suggested that Mr. Pringle intentionally destroyed information when he replaced his computer and backed up his hard drive before he knew that your clients violated his copyright. That statement is equally ridiculous. You suggested that he allegedly did these things so that he could get away with the “downloading and manipulation of Black Eyed Peas music and backdating of electronic evidence submitted to the Court.” These are all serious allegations that, based upon the nature and extent of the information presently available to Mr. Pringle’s lawyers, are devoid of any factual support. While you certainly are entitled to defend this lawsuit, you are not entitled to make baseless representations that have no evidentiary support for the purpose of harassing, needlessly increasing the costs of litigation, or recklessly impugning the Plaintiff’s integrity. I would ask, therefore, that you review the specific factual basis for any such contention consistent with your Rule 11 and professional ethical obligations. If you have some concrete

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factual evidence of such nefarious conduct, please provide it to us forthwith and we will take appropriate steps to address it immediately. If, however, your position is simply based upon rank speculation, a wing and a prayer, a “hunch,” or a desperate hope of finding or manufacturing such “evidence,” then we urge you to discontinue any such effort.

We need not do so, but feel compelled to remind you that Mr. Vernon asked Mr. Riesterer at his deposition to produce for inspection the version of the “Univers sons” music library that he identified in “his” declaration as the source of the “guitar twang sequence” used in “I Gotta Feeling.” We also asked Mr. Riesterer in our discovery to produce a copy of “all hard drives used in the creation, storage or transmittal of any ESI regarding or relating to the creation, writing, production, or recording of “I Gotta Feeling.”” You failed to produce any of these things. In fact, in a demonstration of disingenuous advocacy, you objected to producing them, claiming that they sought information that was “not relevant to the claims or defenses in this action” and that the requests were “overbroad and unduly burdensome.” Surely, the irony of your stated position is not lost on you here. We are confident, too, that it will not be lost on the Court or the Trier of fact down the road should you continue the rhetorical attack.

More importantly, let me also remind you that during Mr. Riesterer’s deposition, he stated under oath in response to Mr. Vernon’s questions that the statement he made in English in the declaration that you wrote for him about the origin of the “guitar twang sequence” was patently and admittedly false, and that he discarded the computers that he used to “create” “I Gotta Feeling.” Perhaps a look at his sworn testimony regarding his conduct might refresh your recollection and demonstrate the contradictory nature of the positions you are taking regarding these issues.

Q: Do you still have this computer?

A: No.

(pp. 192, 193)

When asked to explain the whereabouts of this computer his explanation to Mr. Vernon was incredible and far from compelling:

Q: Where is it now?

A: I gave it to a friend.

Q: Which friend did you give it to?

A: I don’t remember. I have a lot of friends.

(p. 193)

Having transferred the computer to a friend whose identity he could not recall, in order to defend himself, Mr. Riesterer represented that he created "backups" of this computer's hard drive:

- Q. But what about all of the sounds that you saved on the computer, do you still have those?
- A. I made a lot of backups...
- Q. Okay. So when you say you made a lot of backups, where did you, on what type of device did you save these backups?
- A. On hard disks, external hard drives, first of all, internal hard drive and then external hard drives.
- Q. And do you still have these backup copies of the sounds that you had on that original computer?
- A. Of course.
- Q. And are these backups in France?
- A. Yes.

(p. 194)

Although Mr. Riesterer admitted that these hard drives existed at the time of his deposition earlier this summer, you have still failed to produce them. Furthermore, according to your own definition and view of a party's obligation your client, "blatantly violated his obligation to preserve evidence" and he "spoliated critical evidence" when he discarded his computer and merely backed up his hard drive. Please advise as to the time and date that you will be producing the Univers Sons music library and backup hard drives for our expert's review, inspection and copying.

If you contend that Mr. Riesterer's explanation was sufficient, most certainly Mr. Pringle's explanation and production are more than sufficient. Surely, you counseled your client as did we to (i) preserve and protect his computer and hard drive and (ii) hold all of the backup copies of the sounds that were on the original computer in a safe custodial location. Please advise us as to the identity of the custodian of such data and provide us with a date when these backup files will be provided.

As we have explained to you on numerous occasions, Mr. Pringle has done far more to preserve and protect his original music composition than your client has. We have also caused the evidence upon which Mr. Pringle will rely to be placed in the care and custody of a forensic expert who made the entirety of the materials he secured available for your inspection. Certainly, the same cannot be said of you, your office or your client. Finally, we have gone above and beyond our

obligations by preserving receipts and other evidence that account for the whereabouts of most of the equipment that Mr. Pringle has used since 1999.

Notwithstanding the foregoing, we are providing you with responses to the four questions you asked Mr. Greely to answer, which are:

(i) what computer equipment (make and model) Mr. Pringle used in 2010:

(Intel Quad Core 2.66Ghz processor, Intel DP35DP Motherboard, 500gb Hard Drive (partitioned), 4Gb Ram, Antec 650 watt power supply, M-Audio Firewire 410 audio, Nvidiavideo card, 3 port Firewire pci card, Antec Case, D-Link Pci Network Card)

(ii) the dates on which that equipment was first used and when it ceased being used:

(The equipment referenced in question (i) was purchased from various vendors, at different times and used until replaced during the period January 2006 to July 2011. Bryan Pringle, after diligent searches, is unable at this time to identify the specific date or dates upon which each specific computer component or hardware was purchased, became inoperable or replaced other than to identify the time frame in which such replacement occurred, i.e. 2006-2011.)

(iii) whether any backups of this equipment exist, and if so, when they will be produced for inspection:

(The non-privileged backup files of Mr. Pringle's computer were already provided to Defendants' expert in the offices of David Gallant on November 8, 2011. No temporary internet files or metadata are known to exist from any discarded or replaced file.)

(iv) the dates on which that equipment was disposed of:

(See response to question (ii).)

(v) if not disposed of, when the equipment will be produced for inspection:

(Mr. Pringle's warranty replacement hard drive and current computer when operable can be made available upon sufficient notice.)

While we cannot control whether you wish to continue this exercise of point-counter-point, we can and do state that this will be our last communication on this matter.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.



Dean A. Dickie

DAD/mbs

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by Sidney Davy Miller

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October 31, 2011

Via Email & U.S. Mail

Kara E.F. Cenar, Esq.
BRYAN CAVE LLP
161 North Clark Street, Suite 4300
Chicago, IL 60601-3315

Re: Pringle v. William Adams Jr., et al. - Case No. SACV10-1656 JST

Dear Ms. Cenar:

This letter is written in response to your meet and confer letter dated October 8, 2011 and as a follow up to the parties' meet and confer call from October 18, 2011. You have requested, and we have agreed, to follow up with respect to certain of your Meet and Confer Requests.

Meet and Confer Request No. 2

In the course of your "meet and confer" letter, you have accused the Plaintiff and his counsel of working together to reverse engineer Defendants' music, claim it as Plaintiff's own song, fabricate and then destroy evidence, and present false evidence to the Court.

Each of these accusations is made without any evidence of what you allege, and each of the allegations is patently untrue. What affirmative evidence do you have to support these allegations?

As an affirmative matter, there has been no spoliation of evidence, no admission of spoliation of evidence, no manipulation of data, fabrication of evidence, submission of false evidence to the Court, and no improper conduct by either Plaintiff or his counsel. Further, nobody refused to identify in a dialogue with you at any time and your allegation to the contrary is unfounded and appears to be part of an ongoing litigation tactic by Defendants to continually falsely accuse Plaintiff of not cooperating and not complying with requirements, orders or rules.

The allegations described above have been made even though we have provided ample evidence that conclusively establishes that both "Take A Dive" and "Take A Dive (Dance Version)" were created over 9 years before "I Gotta Feeling" was released. As we have previously suggested to Mr. Dickstein, while you are entitled to defend this lawsuit, you are not entitled to make dishonest

representations that lack evidentiary support for the purpose of harassing or impugning the Plaintiff's integrity, or that of his attorneys. These allegations have needlessly increased the scope of the litigation and unless you have evidence of some nefarious conduct, which you are obligated under Rule 26 to share, you should cease and desist making threats of this nature.

Your allegation that Mr. Pringle intentionally and knowingly "destroyed" "evidence" is based on two false premises, both of which are designed to distract from the undisputed evidence in this case. First, a computer purchased in 2010 is not evidence in this case. It is not likely to lead to the discovery of admissible evidence. It is irrelevant. "Take A Dive" was created in 1998, and registered in 1998. "Take A Dive (Dance Version)" was created one year later in 1999. Thus, Mr. Pringle has not identified the 2010/2011 hard drives in response to requests seeking information about documents lost or destroyed or similar requests for the simple reason that the hard drives are not germane.

The hard drive which contained both the original and derivative versions of "Take A Dive" was backed up, and the back up of the hard drive was provided to Dave Gallant in May 2010. On August 8, 2011, Defendants' forensic computer expert, Dana Aga, was given access to the hard drive for inspection and analysis and he made a copy of the disc.

Mr. Pringle purchased two hard drives in 2010. The first of the two hard drives crashed in December 2010 or January 2011 and became unusable. Because the hard drive crashed, Mr. Pringle could not back it up. The second hard drive was thus installed for use around the time the first hard drive crashed. That hard drive also crashed, in July 2011, but Mr. Pringle was able to back up its contents. The hard drive was sent to Western Digital for repair.

The only musical tracks on the 2011 hard drive were those prepared specifically at the request of Mr. Pringle's counsel; the hard drive contains no other musical tracks other than tracks prepared under the direction of counsel. It appears from your letter that you are suggesting that Mr. Pringle's counsel has directed him to falsify evidence and submit it to the Court which, as discussed above, is an extremely serious allegation and it is surprising you would make it here where there is no evidence to support your claim. You seem to make these expansive allegations and then use said allegations to justify your overbroad and impermissible discovery requests. You are not entitled to a "complete and specific and detailed explanation of each and every computer file" from Mr. Pringle's 2010 hard drive. Your request is overbroad, and unlikely to lead to the discovery of admissible evidence.

Further, Mr. Pringle's conduct in discarding a broken and corrupted hard drive does not constitute "intentional destruction" of anything, let alone evidence. Because a hard drive purchased 12 years after the creation of "Take A Dive (Dance Version)" is not evidence in this case, there would be no reason for Mr. Pringle to

think twice before discarding a non-functioning computer with a corrupted hard drive.

Meet and Confer Request No. 3

This documentation was provided to you.

Meet and Confer Request No. 4

The objection is proper and Plaintiff declines to withdraw it. Plaintiff further disputes your characterization of the objection and your description is inaccurate.

Meet and Confer Request No. 5

As discussed in our meet and confer, Plaintiff declines to withdraw this objection because documents have been produced to Plaintiff designated "Attorneys' Eyes Only" and the limitation must be put in place given that designation and Plaintiff's inability to review documents relevant to his prosecution of the case.

Meet and Confer Request No. 6

Plaintiff declines to withdraw the objection.

Meet and Confer Request No. 7

Plaintiff declines to withdraw the objection, particularly given Defendants' "rolling" production of documents and Plaintiff's ongoing Rule 26 supplementation requirements.

Meet and Confer Request No. 9

Mr. Gallant has possession of all computer information as it relates to the creation and storage of "Take A Dive" and "Take A Dive (Dance Version)". The alleged purchases you reference were not made until over 10 years after Plaintiff wrote "Take A Dive" and "Take A Dive (Dance Version)" - thus, are not in Mr. Gallant's possession.

Meet and Confer Request No. 10

The information stated in your letter is both confusing and inaccurate. Plaintiff does not say where he obtained a copy because he affirmatively does not say that he ever *obtained* a copy. Mr. Pringle identified all information to the best of his ability.

You accuse Mr. Pringle of providing an "intentionally and knowingly false answer to this interrogatory." We once again remind you that such allegations should not be made so lightly. What is your evidence of this? Mr. Pringle stands by his answer as provided in response to Interrogatory No. 3 as accurate and truthful.

There is also reference made to DRDR313. We are confirming that Mr. Greely posted Mr. Pringle's song "Take A Dive" on YouTube, under the alias "DRDR313." Mr. Pringle knew that one of his attorneys had posted the song on YouTube, but he was not involved in the posting and did not know that Mr. Greely

was the one who posted the song as “DRDR313” until he was told by Mr. Greely on September 29, 2011.

Meet and Confer Request No. 11

Your characterization of the answer as “non-responsive” is untrue and inaccurate. The answer is responsive, truthful, and accurate.

Meet and Confer Request No. 12

Your characterization of the response as “non-responsive” is untrue and inaccurate. Mr. Pringle answered the interrogatory to the best of his ability. He will supplement the answer, however, to state that he also provided “Take A Dive” to Polo Molina in or about June 2006. He also provided the song to Defendant Adams in or about June 2006. See PL Ex. 12, 13, 71, 72.

Meet and Confer Request No. 13

As discussed, the “investigation continues” is not improper given Defendants’ ongoing conduct in delaying production of relevant documents, and in particular, communications. Further, as discussed, Plaintiff has no current recollections based on the documents currently in his possession but it is likely that documents in Defendants’ possession establishes additional communications.

Meet and Confer Request No. 14

Plaintiff will supplement this answer to identify others to whom “Take A Dive” has been submitted.

Meet and Confer Request No. 15 (the first one re: Interrogatory No. 13)

This subject matter of this Interrogatory will be addressed by Plaintiff’s expert musicologist. As discussed during the meet and confer call, Plaintiff stands on the objection that the Interrogatory calls for a legal conclusion. Subject to and without waiving the objection, Plaintiff states that the songs are substantially, if not strikingly, similar and the facts supporting the similarity can be adduced by listening to the two works.

Meet and Confer Request No. 15 (the second one re: Interrogatory Nos. 14-15)

Plaintiff’s response is accurate and was provided to the best of his memory.

Meet and Confer Request No. 16

The hard drive issue is discussed above and is irrelevant and not likely to lead to the discovery of relevant evidence; thus, it was not identified.

With respect to documents from 2006, Plaintiff did not retain them because, at the time, he was not aware that the Defendants were going to infringe his copyright.

Meet and Confer Request No. 17

Plaintiff stands by this answer.

Meet and Confer Request No. 18

Bryan Pringle used a copy of "Take A Dive" (Dance Version") that was obtained from the hard drive image retained by Dave Gallant. Because the file was created over 10 years ago, it was in a format that is not currently accepted by the Copyright Office. He thus used the Cubase SX described in his answer to the Interrogatory to convert the mp3 to an mp3 that had a smaller size and bitrate for uploading. This took place generally around the time the deposit copy was uploaded to the Copyright Office's website. It was done under the direction of certain of Mr. Pringle's counsel.

It was the recommendation of Mr. Pringle's counsel that he register the "Take A Dive (Dance Version)" with the Copyright Office on November 15, 2010, and he followed that recommendation. Mr. Pringle was told via telephone by Mr. Greely as to what to say in the Copyright Application to register "Take A Dive (Dance Version)." The fees to register the copyright were paid by Mr. Greely as his counsel.

Exhibit "PL0027," which consists of a chain of emails, is not the complete chain of correspondence that took place between Mr. Pringle and Mr. Becker of the Copyright Office. Mr. Greely removed some of the emails before the other emails were produced because they involved Mr. Greely as counsel and his belief that they were subject to the attorney-client privilege. Those communications were produced by our office two days after our meet and confer. Mr. Pringle kept Mr. Greely generally advised as to his conversations with Mr. Becker and Mr. Greely provided him with counsel in those discussions over the phone.

To make this clear, Mr. Pringle has never maintained that the "guitar twang sequence" was exclusively based upon the "Take A Dive" vocals. They were also inspired by the vocals of his song, "Faith."

Meet and Confer Request No. 19

This information is addressed by Plaintiff's computer forensic expert.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.



Dean A. Dickie

DAD/mbs

cc: *All Counsel of Record*

=====

ABILENE POLICE DEPARTMENT
CRIME/INCIDENT REPORT
ABILENE, TAYLOR COUNTY, TEXAS

=====

Reported Date: 10/19/00 Time: 13:31 Case: 00-018940 Page: 1
Code: 30.02 PC Crime: BURGLARY Class: 050220
Occurrence Date: 10/14/00-10/19/00 Day: SATURDAY -THURSDAY Time: 21:00-
Status: IN INACTIVE Closing Officer:
Location: 490 N. PIONEER DR., AB RD: 34
STORE/LOCK STORAGE UNITS / 3F

===== INVOLVED PERSONS =====

VICTIM-1: PRINGLE BRYAN DANIEL DOB: 06/04/1973 Race: W Sex: M
1010 S. WILLIS ST., AB
Apt: State: TX Zip: Phone: 915-665-7547 Adu/Juv: A
POB: Hair: BRO Eye: BRO Hgt: 603 Wgt: Bld:
Business Name: SELF-EMPLOYED
ABILENE, TX Phone: 915 698-6368

===== PROPERTY =====

Item Number: 0001 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model:
Serial: Group Serial:
Descr: GLYPHTECHNOLOGES RACK 6"X2'X2', BLK Qty: 1 Value: 700

Item Number: 0002 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model:
Serial: Group Serial:
Descr: SYMMETRIX COMPRESSOR, BLUE Qty: 1 Value: 600

Item Number: 0003 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: SONY Model:
Serial: Group Serial:
Descr: DAT MACHINE, BLK Qty: 1 Value: 2000

Item Number: 0004 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model:
Serial: Group Serial:
Descr: KURZWEIL RIBBON (MUSIC EQUIP CONTROLLER) Qty: 1 Value: 1000

Item Number: 0005 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model:
Serial: Group Serial:
Descr: SURGER PROTECTOR "JUICE GOOSE " Qty: 2 Value: 600

Item Number: 0006 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model:
Serial: Group Serial:
Descr: DIGITECH FX PROCESSOR Qty: 1 Value: 2000

Item Number: 0007 Evid/Cust: N
Property Type: S Cat: M Article: 1050 Brand: Model: ASR/10
Serial: Group Serial:
Descr: LENSONIQ KEYBOARD W/DIGITAL INPUT Qty: 1 Value: 5000

Reporting Officer: HARTMANKOK JE Number: 000422 Date: 10/19/00 Time: 13:31
Typed by: BEAL Number: CIV545 Date: 10/19/00 Time: 22:39
Approving Officer: BEAL Number: CIV545 Date: 10/19/00 Time: 22:47

EXHIBIT C

PL0001

You are using an outdated version of Internet Explorer; upgrade to IE8, or use Firefox or Chrome.

FLV Player

Last Updated: Aug 23, 2011
License: Free
OS: Windows 7/Vista/2003/XP/2000/NT
Requirements: No special requirements



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[digitalFAQ.com Support Forum](#) > [Digital Video](#) > [Blank Media](#)

User Name Remember Me?

Need to find out when a CD-R was created based on serial/dye numbers on disc

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09-20-2011, 05:04 PM

#1

[dagardc](#)
Free Member

Join Date: Sep 2011
Posts: 6
Thanks: 0
Thanked 0 Times in 0 Posts

Trying to authenticate the timeframe that two discs were created based on the physical numbers printed on the center of the disc. Wondering if anyone here would be able to assist based on the number formats or can point me to a reference? These CD-Rs have no branding/labeling on them whatsoever other than the numbers.

From feedback received on other forums they are Ritek and Verbatim, but I was wondering if anyone had an actual reference to interpret these stamps to dates (even if it's just a year).

Regarding my intent, the timeframe of when a disc could have been created can be important in a legal matter. The manufacturing info just helps to provide a frame of reference (for example if the media was manufactured in 2005 but someone claims they were burned in 1999, that would be an issue).

Thanks in advance for any assistance.

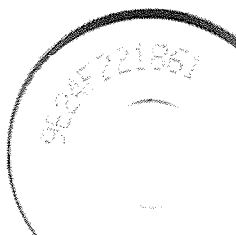


EXHIBIT D



[Taiyo Yuden CDRs & DVD-Rs](#) Wide Selection Of Taiyo Yuden Media. Great Prices. Shop Now. www.neato.com
[Taiyo Yuden CD/DVD Media](#) CD-R \$0.21. DVD-R \$0.24, Premium Line. Volume Discounts www.rima.com
[Hepatitis C Research](#) Study volunteers needed. No cost study meds. Compensation. StudyforHepC.com

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09-20-2011, 05:19 PM

#2



kpmedia
Site Staff / Owner and Editor

Join Date: Oct 2009
Posts: 782
Thanks: 41
Thanked 99 Times in 95 Posts

Quote:

Originally Posted by [dagardc](#)
Regarding my intent, the timeframe of when a disc could have been created can be important in a legal matter. The manufacturing info just helps to provide a frame of reference (for example if the media was manufactured in 2005 but someone claims they were burned in 1999, that would be an issue).

There's two ways to get assistance on this.

1. Asking the online community. What we'll need to see is not just the hub code, but the media ID on the disc, as well as a photo of the disc itself (assuming it's not been covered up with a label -- in which case it needs to be removed). Disc manufacturers change the media ID for every new generation of disc, and they change the brand markings every year or two. By triangulating those features, we can often pinpoint the media to within a few years.

2. Asking the manufacturer. If this is indeed a legal case, the opinions of the online community won't count for much. You'll need an expert witness, or some sort of documentation from the manufacturer stating what the batch code means, and hopefully connecting it to a manufacturing location/date. Given the number of mergers/bankruptcies that have happened in the past, that can be impossible. But if the disc is truly Ritek or Mitsubishi, then you may be in luck, as those manufacturers still exist today.

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09-20-2011, 05:49 PM

#3

dagardc
Free Member

Join Date: Sep 2011
Posts: 6
Thanks: 0
Thanked 0 Times in 0 Posts

Thanks for the prompt reply. Unfortunately these discs have no branding or labeling whatsoever other than the hub code. I have forensic images of them and will look into the media ID. Is there a reference for the different media IDs and what they may look like?

Regarding the manufacturers, I've looked into that but only found dead-ends. Do you or anyone on this forum have current contact info for these types of requests?



09-20-2011, 10:08 PM

#4



admin
Site Staff / Media Project and Technical Adviser

Join Date: Oct 2003
Posts: 3,812
Thanks: 104
Thanked 389 Times in 341 Posts

The media ID is not printed on the disc.
You put the disc in a computer, and then use special software to read the ID. It's digital data held on the disc itself.

The software is mostly all freeware: [Software for Media ID and Quality Scans \[DOWNLOADS + GUIDE\]](#)
And then the DVD reviews and articles on this site have information that equally applies to CD tech.

If this site has been as helpful as a book or magazine, then [donate a few dollars](#) or consider [upgrading your membership](#).
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You must be logged in to view images and download attachments.



09-21-2011, 08:10 AM

#5



pepst
Free Member

Join Date: Dec 2010
Location: Slovakia
Posts: 41
Thanks: 3
Thanked 23 Times in 19 Posts

I can say with 100% confidence that the second CD-R was made by Ritek in 1999. Ritek's serial numbering is very easy to decrypt and hasn't changed for more than 12 years.

Dating the age of older Mitsubishi Chemicals (MCC) made CD-Rs can be a little tricky - they had been manufactured in a number of different facilities in a different countries (Ireland, Japan, Mexico, Taiwan) and therefore, the serial numbering style is different.

But, I have got about 20 Verbatim AZO CD-Rs, that were made in 1998-2001 and their serial numbers always begin with "8" - "1" or "V8" - "S8" / "S1" - "S1" so it is pretty safe to say that the second made was made in 1999 as its serial number begins with "9".



09-21-2011, 03:33 PM

#6

dagardc
Free Member

Join Date: Sep 2011
Posts: 6
Thanks: 0
Thanked 0 Times in 0 Posts

Thanks pepst!

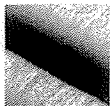
Admin, I don't have the discs in my possession, just forensic images of them, so I can't use software to find the media ID. I tried mounting an ISO as well but every piece of software I tried only sees physical devices.

Regarding the 130-H.912072346D10 serial, on another forum pepst has already decoded this as originating on July 12, 2009, based on the numbers after the ". ". Does anyone know of documentation available to confirm this? As was mentioned earlier, it's hard to substantiate things to people in the legal community without stronger supporting evidence.



09-21-2011, 03:56 PM

#7



pepst
Free Member

Join Date: Dec 2010
Location: Slovakia
Posts: 41
Thanks: 3
Thanked 23 Times in 19 Posts

Quote:

Originally Posted by **dagardc**
Does anyone know of documentation available to confirm this? As was mentioned earlier, it's hard to substantiate things to people in the legal community without stronger supporting evidence.

Except for [this link](#) (that I already post on the myce.com board and which describes the serial numbering system used on Ritek's CD-R and DVD-R media) I can only advise you to try to contact both companies directly:

http://www.ritek.com/_crm/support.asp
https://www.m-kagaku.co.jp/english/aboutsite/002_001.html



09-21-2011, 04:11 PM

#8



kpmedia
Site Staff / Owner and Editor

Join Date: Oct 2009
Posts: 782
Thanks: 41
Thanked 99 Times in 95 Posts

I'd add that Verbatim Europe is generally easier to contact, for non-customer needs. Media info for the media. (Discs info for journalists.) Same for other non-customer type contact. When it comes to Verbatim USA, you get lost in the land of phone jockeys that mostly treat you like an idiot. Contacting Mitsubishi directly would more like kick back a template response, and at a very slow speed. If you do actually get through to a person that could help, odds are they'd be a native Japanese speaker.

I've not had contact with Ritek in a while now. Not since the recession kicked in.

Another method would be to contact the authorized USA distributors, or authorized retailers. Microboards, Meritline and Supermediastore have some excellent knowledge on what I would refer to as "stocking" or "sales" type information. For example, a SKU, disc surface, physical labels, etc. They're observant.

I'd look at contacting Ritek USA before contacting Ritek Taiwan (parent HQ).

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09-21-2011, 04:11 PM

#9



kpmedia
Site Staff / Owner and Editor

Join Date: Oct 2009
Posts: 782
Thanks: 41
Thanked 99 Times in 95 Posts

I'd add that Verbatim Europe is generally easier to contact, for non-customer needs. Media info for the media. (Discs info for journalists.) Same for other non-customer type contact. When it comes to Verbatim USA, you get lost in the land of phone jockeys that mostly treat you like an idiot. Contacting Mitsubishi directly would more like kick back a template response, and at a very slow speed. If you do actually get through to a person that could help, odds are they'd be a native Japanese speaker.

I've not had contact with Ritek in a while now. Not since the recession kicked in.

Another method would be to contact the authorized USA distributors, or authorized retailers. Microboards, Meritline and Supermediastore have some excellent knowledge on what I would refer to as "stocking" or "sales" type information. For example, a SKU, disc surface, physical labels, etc. They're observant.

I'd look at contacting Ritek USA before contacting Ritek Taiwan (parent HQ).

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09-21-2011, 05:01 PM

#10

daqardc
Free Member

Join Date: Sep 2011
Posts: 6
Thanks: 0
Thanked 0 Times in 0 Posts

Thanks again to both of you for the information. Pepst, the link you sent was difficult to decipher (used Google Translate feature built-in to Chrome) and I didn't see anything there the same format as the Mitsubishi hub code.

I've tried to contact Ritek through the link you provided but it goes to a "page cannot be displayed" when submitting it. Mitsubishi worked though.

The hard part is that these discs have nothing printed on them other than the codes.



09-21-2011, 05:32 PM

#11

dagardc
Free Member

Join Date: Sep 2011
Posts: 6
Thanks: 0
Thanked 0 Times in 0 Posts

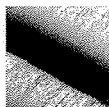
Also, to clarify your earlier comments Pepst, both discs start with a 9 in part of the sequence:
130-H.912072346D10 (is Ritek/AZO according to ATIP interpretation done by software at time of imaging)
9E24F221861 (MCC/Azo)

Did you say that you're 100% that the 9E2 disc is Ritek from 1999 or were you talking about the other one? I wasn't sure if you meant one of them was a Verbatim serial and other is Ritek or if Verbatim was made by Ritek and that's how you knew about the 130-H disc.



09-22-2011, 02:06 PM

#12



pepst
Free Member

Join Date: Dec 2010
Location: Slovakia
Posts: 41
Thanks: 3
Thanked 23 Times in 19 Posts

Quote:

Originally Posted by **dagardc**
Did you say that you're 100% that the 9E2 disc is Ritek from 1999 or were you talking about the other one? I wasn't sure if you meant one of them was a Verbatim serial and other is Ritek or if Verbatim was made by Ritek and that's how you knew about the 130-H disc.

I was talking about the "130-H.912072346D10" disc, which was made by Ritek and that I am 100% sure that it was made in 1999. The second disc (made by Mitsubishi Chemicals/Verbatim) seems to be made in 1999 too, although not with 100% certainty.
By the way - do you need to know when these discs were made or when they were burned?



09-22-2011, 03:36 PM

#13

dagardc
Free Member

Join Date: Sep 2011
Posts: 6
Thanks: 0
Thanked 0 Times in 0 Posts

Thanks for the clarification - I just need to have an idea when they were produced by the manufacturer, not actually burned.



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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION

-----x
4 BRYAN PRINGLE, an individual,
5 Plaintiff,
6 vs.

7 WILLIAM ADAMS, JR.; STACY
8 FERGUSON; ALLAN PINEDA; and
9 JAIME GOMEZ, all individually
and collectively as the music
group The Black Eyed Peas,
et al.,
Defendants.

10 Case No. SACV 10-1656 JST (RZx)
11 -----x

12
13 * * * HIGHLY CONFIDENTIAL * * *

14
15 140 East 45th Street
16 New York, New York
17 June 23, 2011
18 10:16 a.m.

19 Highly Confidential Videotaped
20 Deposition of FREDERIC RIESTERER, held
21 at the offices of Storch, Amini & Munves,
22 PC, pursuant to notice, before Jennifer
23 Ocampo-Guzman, a Notary Public of the State
24 of New York.
25

1 RIESTERER - HIGHLY CONFIDENTIAL

2 album?

3 MR. PINK: Objection, form.

4 A. Yes.

5 Q. And did this song have a name when
6 you first started to work on it?

7 A. Yes.

8 Q. And what was the name of the song?

9 A. David Pop GTR.

10 Q. When did you begin to work on the
11 song David Pop GTR?

12 A. Precisely on October 16th or 17,
13 2008.

14 Q. Why do you remember that date so
15 precisely?

16 A. Well, because, first of all, I had
17 worked a lot on that song plus since it's
18 always the same guitar, it's the same guitar
19 as on "Love is Gone" and I always work on my
20 computer so I keep seeing the date on my
21 files on the computer. I spent a lot of time
22 working on those songs. These are key
23 moments in my life.

24 Q. Do you still have this computer?

25 A. No.

1 RIESTERER - HIGHLY CONFIDENTIAL

2 Q. Where is it now?

3 A. I gave it to a friend.

4 Q. Which friend did you give it to?

5 A. I don't remember. I have a lot of
6 friends.

7 Q. So you don't remember who you gave
8 your computer to?

9 A. I have to say between two people.
10 I don't remember if I gave it to this one or
11 that one, I'm not completely sure.

12 Q. But what about all of the sounds
13 that you had saved on the computer, do you
14 still have those?

15 MR. DICKSTEIN: Objection,
16 foundation.

17 MR. PINK: Objection as to form.

18 A. I made a lot of backups. And you
19 have to know that this computer was -- it was
20 -- this computer was a power PC and it was
21 not an Intel computer. Everything became
22 Intel.

23 Q. Okay. So when you say you made a
24 lot of backups, where did you, on what type
25 of device did you save these backups?

1 RIESTERER - HIGHLY CONFIDENTIAL

2 A. On hard disks, external hard
3 drives, first of all, internal hard drive and
4 then external hard drives.

5 Q. And do you still have these backup
6 copies of the sounds that you had on that
7 original computer?

8 MR. DICKSTEIN: Objection, form, as
9 to all the sounds.

10 A. Of course.

11 MR. PINK: I'm going to join that.

12 Q. And are these backups in France?

13 A. Yes.

14 Q. So you said you started creating a
15 song October 16th or 17, 2008, and I'm
16 referring to "David Pop GTR," what was your
17 role in the creation of that song?

18 A. I am the co-composer of that song
19 with David Guetta and we were working one
20 next to another and we wanted to create a
21 song with the same guitar as in "Love is
22 Gone."

23 Q. Did Joachim Garraud have any role
24 in the creation of "David Pop GTR"?

25 A. No.

1 RIESTERER - HIGHLY CONFIDENTIAL

2 told you. Otherwise don't answer.

3 THE WITNESS: No.

4 Q. Did you ever search your records
5 for communications between you and anyone
6 else regarding the creation of "I Gotta
7 Feeling"?

8 A. Musical records?

9 Q. All of your records.

10 A. I work 16, 17 hours per day to
11 compose. I'm not going to go and look for
12 things. Once again I haven't done anything.
13 Why would I establish evidence to prove
14 anything ahead of time.

15 Q. So you did not go and look for
16 anything?

17 MR. DICKSTEIN: Objection, form.

18 A. Well, no.

19 Q. Did you search your records for any
20 communications relating to the creation of
21 the song "Love is Gone"?

22 A. I'm sorry, I don't understand the
23 formulation of the question.

24 Q. Did you go and search your records
25 for any documents or communications relating



Transcript of the Testimony of **DAVID GUETTA**

Date: September 26, 2011

Case: BRYAN PRINGLE v. WILLIAM ADAMS, et al.

FOX AND ASSOCIATES COURT REPORTERS, INC.

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Email: foxcsr@gmail.com

Internet:

Page 74

1 LOS ANGELES, CALIFORNIA, MONDAY
 2 SEPTEMBER 26, 2011; 2:03 P.M.
 3
 4 THE VIDEOGRAPHER: Okay. This is the
 5 beginning of Media Number Three in the deposition of
 6 David Guetta in the matter of Bryan Pringle vs.
 7 William Adams, et al.
 8 We are now going back on the record.
 9 The time is 2:03 p.m.
 10 EXAMINTION (Resumed)
 11 BY MR. DICKIE:
 12 Q. Are you all set to begin,
 13 Mr. Guetta?
 14 A. Yes.
 15 Is this tea mine?
 16 MR. SLOTNICK: Yes.
 17 MR. DICKSTEIN: Yes, for you.
 18 THE DEPONENT: Thank you.
 19 Sorry.
 20 BY MR. DICKIE:
 21 Q. Do you understand that you are still
 22 under oath?
 23 A. "Oath." Oath. How do you spell it?
 24 Yeah, just out of curiosity.
 25 MR. SLOTNICK: O-a-t-h.

Page 75

1 THE DEPONENT: Yes, I do.
 2 BY MR. DICKIE:
 3 Q. Did you review any materials during
 4 the lunch break?
 5 A. No.
 6 Q. Did you discuss your testimony during
 7 the lunch break?
 8 MR. SLOTNICK: Objection to the extent
 9 it calls for conversations with counsel.
 10 MR. DICKIE: Well, I didn't ask for
 11 the advice. It was a yes-or-no question, Counsel.
 12 THE DEPONENT: We discussed the waste
 13 of time.
 14 BY MR. DICKIE:
 15 Q. So the answer is yes?
 16 A. Yes. Not what was said.
 17 Q. And what was your second conversation
 18 with Will.i.am regarding the lawsuit?
 19 A. Um --
 20 DEPOSITION OFFICER: Hang on just a
 21 minute.
 22 THE DEPONENT: It was yesterday, about
 23 the waste of time.
 24 BY MR. DICKIE:
 25 Q. And did you call Mr. Adams?

Page 76

1 MR. SLOTNICK: Wait for the
 2 translation.
 3 THE DEPONENT: Sorry.
 4 MR. SLOTNICK: The translation.
 5 THE DEPONENT: Yes.
 6 BY MR. DICKIE:
 7 Q. And what specifically did you say to
 8 him?
 9 A. He asked me for the translation of the
 10 word "shower" into French. And that was the reason
 11 for my call.
 12 And I said to him, "Oh, by the way" --
 13 I told him, "By the way, tomorrow is my -- the day of
 14 my deposition."
 15 And he said, "This is really terrible.
 16 What a waste of time and money for everyone."
 17 Q. Did you say anything else?
 18 A. No.
 19 Q. Did he say anything else?
 20 A. Regarding the case?
 21 Q. Yes.
 22 A. No.
 23 Q. By the way, I don't think I asked you
 24 this, but I just want to confirm, am I -- did you at
 25 any time search your records for any documents called

Page 77

1 for in this case?
 2 MR. DICKSTEIN: Object to form.
 3 THE DEPONENT: No.
 4 BY MR. DICKIE:
 5 Q. Now, you indicated that you perform as
 6 a DJ.
 7 Did I understand you correctly?
 8 A. Yes, you understood correctly.
 9 Q. And what is it that a DJ does, as you
 10 understand it, and perform in that capacity?
 11 A. Right when he's on the stage?
 12 Q. What he understands. What is it that
 13 a DJ does, yes.
 14 A. (In English): In general or --
 15 Q. Let's start with general.
 16 A. Is it in general?
 17 Q. In general, yes. And then we'll go
 18 specifically.
 19 A. Okay. That's a vast subject.
 20 The -- the job of a DJ is to make
 21 people dance by playing music, by playing prerecorded
 22 music.
 23 And DJs have varied technical
 24 capacities, abilities that allow them to give more or
 25 less originality to the records that are being



Transcript of the Testimony of **WILLIAM ADAMS**

Date: July 25, 2011

Case: BRYAN PRINGLE v. WILLIAM ADAMS, et al.

FOX AND ASSOCIATES COURT REPORTERS, INC.

Phone: 949.870.5757

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Internet:

1 BY MR. GOULD:

2 Q. How many personal computers do you
3 have?

4 A. Every computer I have I do business
5 on.

6 Q. Okay. How many computers are there?

7 A. I have about 20 computers.

8 Q. Are any of those computers located at
9 Interscope?

10 A. No, no, no, no.

11 Q. All right. Did you search any of
12 these computers for any e-mails with respect to this
13 matter, this case?

14 A. Yes.

15 Q. Okay. And when did you do that?

16 MS. CENAR: If you remember when, you
17 can identify when.

18 THE DEPONENT: Last time I saw her.

19 BY MR. GOULD:

20 Q. Just give me a date.

21 A. I don't remember.

22 Q. About when? Last year? Two years
23 ago? Six months ago?

24 A. A couple of days ago.

25 Q. A couple of days ago.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

BRYAN PRINGLE, an)
individual,)
)
Plaintiff,)

) Case No.
) 8:10-cv-01656-JST-RZ

WILLIAM ADAMS, JR.;)
STACY FERGUSON; ALLAN)
FINEDA; and JAIME)
GOMEZ, all)
individually and)
collectively as the)
music group the Black)
Eyed Peas; DAVID)
GUETTA; FREDERICK)
RIESTERER; UMG)
RECORDINGS, INC.;)
INTERSCOPE RECORDS;)
EMI APRIL MUSIC,)
INC.; HEADPHONE)
JUNKIE PUBLISHING,)
LLC; WILL.I.AM MUSIC,)
LLC; JEEPNEY MUSIC,)
INC.; TAB MAGNETIC)
PUBLISHING; CHERRY)
RIVER MUSIC CO.;)
SQUARE RIVOLI)
PUBLISHING;)
RISTER EDITIONS;)
and SHAPIRO,)
BERNSTEIN & CO.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF
BRYAN PRINGLE

Wednesday, August 24, 2011

1 A. Late February 2010.
 2 Q. And would it be fair to say
 3 that you didn't contact an attorney before
 4 that time on concerns over infringement of
 5 that song? 11:20:34
 6 A. For "I Gotta Feeling"?
 7 Q. Yes.
 8 A. I don't believe so. I mean,
 9 when I say late February 2010, I'm saying
 10 that's what I recall, the best of my 11:20:46
 11 recollection, at this time. I may have heard
 12 it -- let's say December 31st, I may have
 13 heard it, you know, February 31st, March 7th.
 14 I'm just given you a general time period. So
 15 when I say late February 2010, to the best of 11:21:06
 16 my recollection, that's what I recall.
 17 Now, did I contact other
 18 attorneys regarding this, I don't recall.
 19 It's possible, I guess. I don't know.
 20 Q. When did you first believe that 11:21:19
 21 any defendant had been infringing any of your
 22 music?
 23 A. Just to clarify, are you
 24 talking about me personally, when did I come

1 Q. Have you ever had any e-mail
 2 communications with him?
 3 A. No.
 4 Q. Have you ever had any written
 5 communications with him? 11:22:52
 6 A. I did send William Allan --
 7 Adams a demo through Interscope, 2006,
 8 roughly around that time frame.
 9 And I also -- well, I couldn't
 10 say specifically. That's the only time that 11:23:14
 11 I recall sending specifically directly to
 12 him, but it was through Interscope Records.
 13 Q. Can you tell me what address
 14 you sent it to?
 15 A. I know it was in California. I 11:23:27
 16 believe it was -- and this is just from what
 17 I recall. I believe it's on Bur- -- Burbank
 18 Drive? I don't recall it specifically. I
 19 could look at the records that I have to
 20 refresh that. 11:23:46
 21 Q. What records do you have for
 22 that mailing, sir?
 23 A. Well, I believe my attorney has
 24 records showing there is a -- what I'm

1 to a cognitive decision and say "I believe
 2 this is infringing," or are you talking about
 3 when do I believe they started infringing?
 4 Q. No, when you believe.
 5 A. Around -- I believe it was 11:21:47
 6 around 2010, February.
 7 Q. For any -- any song of yours?
 8 A. Well, it was -- the first song
 9 that I discovered was "I Gotta Feeling"
 10 because it was so obvious that the sample was 11:22:02
 11 taken from my song, but it was a period of
 12 time. Like, for instance, just recently,
 13 "Where Them Girls At" wasn't released until
 14 I guess May of 2011, so it was different
 15 dates. 11:22:22
 16 But the first -- the first time
 17 was around February of 2010 that I said,
 18 "Hey, I think there's a problem. I think
 19 there's intentional, willful infringement."
 20 Q. Had you -- have you ever spoken 11:22:40
 21 to William Adams?
 22 A. No.
 23 Q. Have you ever met him?
 24 A. No.

1 specifically referencing, when there was a
 2 list, I believe it was Billboard's -- I
 3 believe it was an excerpt from "Billboard's
 4 Guide to Touring and Promotion." That's what
 5 I'm thinking in my mind and my attorney has a 11:24:16
 6 copy. It's just the one page that has the
 7 address of Interscope and a bunch of other
 8 different record companies.
 9 Q. How did you get Will Adams'
 10 name to send to Interscope? 11:24:31
 11 A. I don't specifically recall,
 12 but, I mean, he's well known in the music
 13 industry. Yeah, okay, that's...
 14 I have a tendency, just to
 15 clarify, I have been sending out demos since 11:24:49
 16 early 1990s, and I get lists of record
 17 companies. I also buy magazines that have
 18 touring and promotion names. I also go to
 19 the library and research managers, booking
 20 agents, publishers, famous songwriters, so 11:25:11
 21 it's possible.
 22 But I can tell you more
 23 specifically, he caught my attention with
 24 "Don't Phunk With My Heart." I thought when

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1 I first heard that song that really came on
 2 my screen but prior to that, I mean, I knew
 3 of him.
 4 Q Was there anything other than
 5 hearing the song "Don't Phunk With My Heart" 11:25:37
 6 that prompted you to specifically send a demo
 7 to William Adams --
 8 A Yes.
 9 Q -- at Interscope?
 10 What? 11:25:46
 11 A I'm dogmatic. If you're in the
 12 music industry, you're getting a demo from
 13 me, because that's the way I am. I send
 14 thousands of demos. I would say I almost
 15 harass people, and I've been doing that 11:26:05
 16 consistently for a long time.
 17 Q So this specific mailing that
 18 you recall sending to Mr. Adams was in 2006?
 19 A I believe it was somewhere
 20 around that time, which is not to say that I 11:26:17
 21 didn't send him multiple mailings. But the
 22 specific one that I recollect was around
 23 2006, 2007 time period.
 24 Q Did you have anything other

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1 than the demo CD and whatever it was that you
 2 mailed to the Interscope address?
 3 A Do I still have it or did I
 4 mail more --
 5 Q What did you actually put in an 11:26:43
 6 envelope and mail to Interscope that you
 7 believe was directed to William Adams'
 8 attention?
 9 A It was --
 10 THE WITNESS: Do you want me to 11:26:57
 11 answer that?
 12 MR. DICKIE: Sure. If you can.
 13 THE WITNESS: You're suspect,
 14 buddy.
 15 A Well, I can't specifically 11:27:03
 16 state how many songs, but what I recall is
 17 when I send out demos -- and more
 18 specifically to William Adams, "Take a Dive"
 19 Dance Version, other versions of "Take a
 20 Dive," also other songs that I created. 11:27:21
 21 There was probably -- I'm
 22 taking a stab at it, there's probably 20
 23 songs, and I usually have a letter -- I
 24 created a little guy, a little blue guy

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1 holding a flame that I put, it's called Dead
 2 Beat Records, and I sent a, you know, a
 3 letter.
 4 I might have put on the package
 5 "To Sticky Fingers" or something like that to 11:27:53
 6 try to get past the A&R people, and maybe a
 7 plastic sleeve to protect the CD, and
 8 information regarding multiple websites that
 9 I have and contact information.
 10 Might have been a business card 11:28:19
 11 in there, might have just been a letter. I
 12 don't specifically recall what I sent to him
 13 exactly, but that's pretty much the M.O.
 14 BY MS. CENAR:
 15 Q So the letter, do you have any 11:28:29
 16 copies of what that letter might look like?
 17 A That specific letter?
 18 Q Uh-huh.
 19 A I might. I might have a
 20 letterhead still. Basically it's just a guy, 11:28:45
 21 it's a little blue guy stick figure holding
 22 this thing that says "Dead Beat Records."
 23 Q Let me just back up a little
 24 bit. Do you have a copy of the specific CD

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1 that you say you put in an envelope and
 2 mailed to William Adams, care of Interscope?
 3 A Well, no. I mean, if I sent
 4 it, I don't have any more.
 5 Q So you don't have any duplicate 11:29:13
 6 copy of that in your possession today?
 7 A No.
 8 Q And do you have any at your
 9 home or any storage facility or anyplace that
 10 you can think of? 11:29:23
 11 A A duplicate copy of that
 12 specific CD?
 13 Q Yep.
 14 A No.
 15 Q And do you have a copy of the 11:29:34
 16 actual letter that you say you put in the
 17 mailing to Mr. Adams?
 18 A No.
 19 Q Do you have a copy of anything
 20 that would reflect that this actual mailing 11:29:46
 21 occurred?
 22 A Mailing receipt, U.S. Postal
 23 Service.
 24 Q And does that have Mr. Adams'

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1 name on it?
 2 A. No.
 3 Q. Does it reflect what the
 4 content of the mailing would be?
 5 A. I don't understand that 11:30:07
 6 question, but I think what you're asking me,
 7 does it specifically say on the receipt "demo
 8 CD" or something?
 9 Q. On any record that you may
 10 have, is there anything that you have that 11:30:17
 11 reflects what you actually put in this
 12 envelope that you say you mailed to Mr. Adams
 13 in 2006?
 14 A. I would say yes.
 15 Q. What? 11:30:30
 16 A. Well, the specific receipts
 17 that I'm referring to have a weight and a ZIP
 18 code and the weight of -- where you see the
 19 multiple CD's that were sent, they all
 20 correspond to if you would actually sit down 11:30:44
 21 and weigh a letter and a CD, it would
 22 correspond and I could produce that to say,
 23 hey, these are the exact same weights, so --
 24 and I'm just giving my opinion. I would say

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1 ves.
 2 Q. Other than that receipt, do you
 3 have any other document or anything else that
 4 would tell us what was in the envelope?
 5 A. No. It would just be personal 11:31:07
 6 recollection.
 7 Q. From 2006?
 8 A. Yeah. 2006, 2007.
 9 Q. So other than -- so was there
 10 more than one mailing specifically to William 11:31:21
 11 Adams?
 12 MR. DICKIE: Objection, asked
 13 and answered.
 14 A. I object too, but I'll answer
 15 that yes. 11:31:28
 16 BY MS. CENAR:
 17 Q. How many specific to William
 18 Adams?
 19 A. I couldn't answer that just
 20 because -- I can only personally attest to 11:31:38
 21 one that I know of, but I would have to say
 22 yes because of my pattern and practice of
 23 bombarding people.
 24 So if you're getting one,

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1 you're probably going to get 10 or 20, so I
 2 would say the answer to that is I believe
 3 that there's more. I'm positive of it, but I
 4 couldn't personally attest or provide any
 5 information or evidence other than that one 11:32:10
 6 mailing.
 7 Q. Which is the 2006 one?
 8 A. 2006, 2007. I'd have to
 9 refresh my memory by looking at the actual
 10 receipts. 11:32:21
 11 Q. So other than the mailings that
 12 you say you made to William Adams, have you
 13 had any other form of communication with him?
 14 A. You mean direct communication?
 15 Q. Yes. 11:32:37
 16 A. Because I flipped off the TV
 17 once when he was on, but no. I felt that was
 18 direct communication. For me it was
 19 cathartic, but...
 20 Q. Did you receive any 11:32:49
 21 communication back from him that he actually
 22 received any mailing that you sent?
 23 A. He released an infringing song
 24 called "I Gotta Feeling," so I would say yes.

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1 But if as I understand what you're asking me,
 2 did he write me a letter or e-mail me or
 3 phone call me, no.
 4 Q. Did you receive anything from
 5 Mr. Adams indicating that this package that 11:33:10
 6 you sent was received by him?
 7 A. Well, again, I would say
 8 releasing a song with part of a sample from
 9 one of your songs is an indication.
 10 But as I understand your 11:33:25
 11 question, I didn't receive any letters,
 12 e-mails, telephone calls, Twitters, blogs,
 13 nothing of that nature, so --
 14 Q. Do you have any information as
 15 to whether Mr. Adams accessed your music in 11:33:40
 16 any other way other than your mailing?
 17 A. Yes. He has a sample of part
 18 of my song in "I Gotta Feeling."
 19 Q. I understand your position on
 20 that, but other than that, do you have any 11:33:51
 21 information from any source that Mr. Adams
 22 accessed your music in any other way?
 23 A. Yes.
 24 Q. How?

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1 Internet Explorer and then sent a copy of the
 2 link to my attorney. So it wouldn't
 3 necessarily be a document, but it would be an
 4 Internet document, I guess, to a link, that
 5 said here's what Jimmy Iovine had to say. 11:48:55
 6 Now, I'm sorry, could you
 7 repeat the question, the second one.
 8 MS. CENAR: Could you read my
 9 other question back for the witness?
 10 (The reporter read back the 11:49:29
 11 following portion of the preceding
 12 record.)
 13 "QUESTION: What other
 14 documents have you turned over in this
 15 litigation that relate to Mr. Adams 11:48:23
 16 being an A&R rep?"
 17 (End of readback.)
 18 A. You'd have to refer to my
 19 attorney because I don't know. I don't have,
 20 that I recall, any direct contact with anyone 11:49:35
 21 other than my attorneys, and they have
 22 contact with the Court and with you, so I'd
 23 have to defer to my attorneys on that.
 24 BY MS. CENAR:

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1 Q. Is there any other information
 2 that you have that you believe indicates that
 3 Mr. Adams had access to any of your music?
 4 A. Not at this time, but it's -- I
 5 can't say that there's, you know, a document 11:50:00
 6 or something that might refresh my memory in
 7 the future. But at this time, that's all I
 8 really recall or all I'm representing.
 9 Q. Do you have -- strike that.
 10 Can you tell me what your basis 11:50:20
 11 is for claiming that David Guetta had access
 12 to any of your music?
 13 A. Yes. I had contact with Dave
 14 Guetta and Joachim Gaurraud roughly -- I
 15 think it was around 1999 and 2003, I had went 11:50:43
 16 to France, delivered to many different DJ's,
 17 and also to record labels in France, a series
 18 of demos.
 19 I also had a friend of mine,
 20 his name is Scott Brown, he was a DJ and also 11:51:03
 21 my older brother, Jeff Pringle, was also a
 22 DJ, and the music was being played at
 23 least -- I can't remember how many countries
 24 it was, but I sent -- I sent a lot of

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1 different demos.
 2 To make a long story short,
 3 there was access because it was being played
 4 on the radio. There was also access because
 5 I had several different websites including 11:51:31
 6 MP3.com since roughly around 1998 where I had
 7 posted a lot of my songs for download. I
 8 sent a lot of music to France, Europe,
 9 Germany, even Japan, Canada.
 10 Also, Joachim Gaurraud, I 11:51:49
 11 believe that there was, from what I recall --
 12 now, this is a long time ago, but Joachim
 13 Gaurraud and Dave Guetta have a production
 14 company, I believe it's called Gum
 15 Productions, but it's been a long time. 11:52:11
 16 Q. Gum?
 17 A. Gum, G-U-M, and I don't recall
 18 the exact date, but I received a letter from
 19 Joachim Gaurraud that also referenced Dave
 20 Guetta. And what I recall from the letter 11:52:22
 21 was that they're both DJ's and they had
 22 listened to the music and they asked for
 23 specific tracks, one of which was the track
 24 for -- and I'm not saying it was

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1 exhaustive -- for "Take a Dive" Dance
 2 Version, which contained the guitar twang.
 3 So I had direct contact with at
 4 least Joachim Gaurraud. And it's my
 5 understanding that the contact was -- it was 11:52:53
 6 Dave Guetta and Joachim Gaurraud that were
 7 contacting me through Gum Productions.
 8 Q. And approximately what time
 9 frame did that occur, sir?
 10 MR. DICKIE: Objection, asked 11:53:05
 11 and answered.
 12 THE WITNESS: You want me to
 13 answer that?
 14 MR. DICKIE: Yes.
 15 A. I've got to refer to the big 11:53:10
 16 dog.
 17 That was after -- it was
 18 sometime after 2001, it was -- I'd say it was
 19 around 2001 or 2003, I believe -- and I'd
 20 like to clarify. I believe that there was a 11:53:27
 21 request for admission and also I believe
 22 there might have been interrogatories where I
 23 said 1990- -- well, I didn't say it. It was
 24 written 1999 to 2003. I'd like to just go on

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1 the record to correct that. It wasn't 1999,
 2 it was after 2001 to around 2003. It might
 3 have been 2004.
 4 BY MS. CENAR:
 5 Q So let me back up a little bit. 11:53:51
 6 You are telling me that you received a letter
 7 from Joachim Gaurraud?
 8 A Is that how you say his name?
 9 Q That's how I'm saying his name.
 10 A Okay. I'm just trying to 11:54:05
 11 clarify. I don't want to insult the guy.
 12 Q Is that true or not?
 13 A That is true, but --
 14 Q All right. Do you still have a
 15 copy of that letter? 11:54:14
 16 A No, I don't. But I wasn't
 17 finished answering. What I'm alleging is and
 18 what I'm asserting is it wasn't just a letter
 19 from Joachim Gaurraud -- which is how I say
 20 his name -- my understanding from what I 11:54:26
 21 recall, it was a letter from Gum Productions,
 22 Joachim Gaurraud and David Guetta. And no, I
 23 do not have a copy of that letter.
 24 Q And you received that letter

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1 sometime between 2001 and 2003?
 2 A Roughly around that time. It
 3 might have been 2004. It was prior to --
 4 well, I can't even remember the name of the
 5 Dave Guetta album. Yeah, that's correct. It 11:54:48
 6 was around somewhere around that time frame.
 7 Q And?
 8 THE VIDEOGRAPHER: We have
 9 about five minutes remaining on the
 10 videotape. 11:54:58
 11 MS. CENAR: Okay.
 12 BY MS. CENAR:
 13 Q And this was a letter that you
 14 said that they actually wrote to you
 15 requesting that you send them specific 11:55:05
 16 tracks?
 17 A Well, it was more of a letter,
 18 and I got a lot of these, people saying, you
 19 know, "Hey, man, we dig your stuff, dude,"
 20 and it's something that -- I don't know if it 11:55:19
 21 goes on as much anymore now, but one of the
 22 things when I give people, especially DJ's
 23 and other individuals, and I usually say, you
 24 know, if you're interested in playing this at

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1 a club or something -- and I did this a lot
 2 in Austin at Club Paradox, interacting with
 3 the DJ's, they'll want to play the music at a
 4 certain beats per minute, and the normal
 5 beats per minute is 120 beats per minute. 11:55:46
 6 This particular song is at 130,
 7 which is a little bit faster, so a lot of
 8 times people will say, "Hey, you know, I like
 9 your music and, you know, we might be
 10 interested in playing your songs or 11:56:05
 11 whatever." So I would give people certain
 12 tracks so that they could -- because now it's
 13 easy enough you can go from 120 beats per
 14 minute to 130 and you can expand and contract
 15 it. There's no audio loss. 11:56:21
 16 Back then, you would -- to do
 17 something like that, to go from 130 beats per
 18 minute to 120 or whatever, you would have a
 19 lot of audio loss because the technology was
 20 really bad. 11:56:34
 21 So I would provide tracks and
 22 specifically to them, tracks -- and I'm not
 23 saying it was all of the tracks from 130 to
 24 120 beats per minute so that they could play

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1 it.
 2 And I did this a lot. This is
 3 not just with Joachim Gaurraud and Dave
 4 Guetta. This was something -- it was
 5 standard, I didn't think much of it about -- 11:56:58
 6 I figure they'll play it in the club and I've
 7 heard stuff of mine played in the clubs
 8 and --
 9 Q My question was pretty basic
 10 and pretty simple. Did they send you a 11:57:10
 11 letter asking for you to send them specific
 12 tracks?
 13 A I don't recall the exact -- the
 14 specific what was written in a letter almost
 15 10 years ago. That's my response. 11:57:25
 16 Q This was the 2001 to 2003 time
 17 frame, that's your recollection?
 18 A Well, that's not what I said,
 19 but it was roughly around 2001, 2004. That's
 20 my recollection, but I don't specifically 11:57:39
 21 recall who signed the letter, what exactly it
 22 said, and if there was a specific request.
 23 But I know that I sent that,
 24 because they were DJ's, and I said this could

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1 MR. DICKIE: Objection, assumes
 2 facts.
 3 BY MS. CENAR:
 4 Q. Around the time that you filed
 5 this lawsuit? 13:40:47
 6 THE WITNESS: Do you want me to
 7 answer that?
 8 MR. DICKIE: If you have any
 9 independent discussions outside of
 10 discussions with your counsel, you can 13:40:54
 11 answer as to that. If you don't, then
 12 you're instructed not to answer.
 13 THE WITNESS: Can you repeat
 14 that question one more time?
 15 MS. CENAR: Please read back 13:41:02
 16 for the witness.
 17 (The reporter read back the
 18 following portion of the preceding
 19 record.)
 20 "QUESTION: Outside of 13:40:36
 21 conversations with your counsel, was
 22 it your idea to post this comparison
 23 on the Internet?
 24 "MR. DICKIE: Objection,

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1 assumes facts.
 2 "QUESTION: Around the time
 3 that you filed this lawsuit?"
 4 (End of readback.)
 5 THE WITNESS: Do you want me to 13:41:25
 6 answer that?
 7 A. I'm going to have to -- that's
 8 too mixed up in privileged communications.
 9 I'm going to redecline that.
 10 MS. CENAR: Okay. Can we mark 13:41:37
 11 this as the next exhibit, please?
 12 (Pringle Exhibit 27 was marked
 13 for identification and/or introduced.)
 14 THE WITNESS: Yeah. I do
 15 recognize this. 13:41:59
 16 BY MS. CENAR:
 17 Q. Would you take a moment and
 18 look at Exhibit 27, please.
 19 A. Okay. I've looked at it. I'm
 20 familiar with this. This is my web page. 13:42:08
 21 MR. DICKIE: Wait for a
 22 question, Mr. Pringle.
 23 THE WITNESS: Didn't I fire
 24 you'

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1 BY MS. CENAR:
 2 Q. Exhibit 27 is a copy of your
 3 web page; is that your testimony?
 4 A. Yes, at broadjam.
 5 Q. And did you create the 13:42:22
 6 information that was posted on this web page?
 7 A. Some of it.
 8 Q. What information did you not
 9 create?
 10 A. I would have to -- I would have 13:42:34
 11 to say that I can't disclose, because again,
 12 it -- I would have to disclose confidential
 13 privileged communications between me and my
 14 attorney regarding this. I can tell you that
 15 this is my account. 13:42:52
 16 Q. All right. The "Song: Take a
 17 Dive vs I Gotta Feeling" that was posted and
 18 uploaded on there, did you do that?
 19 A. Yes, I believe so.
 20 Q. All right. Where did you get 13:43:05
 21 the vocals for "I Gotta Feeling" in this
 22 posting?
 23 A. From -- I think it was one of
 24 the remix versions. There was -- like I said

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1 previously, there was like 1200 different
 2 versions. Some...
 3 Q. I'm sorry. What remix version?
 4 A. I don't recall exactly.
 5 Q. Were these the remix versions 13:43:31
 6 that you were referring to from the beatport?
 7 A. I can't recall specifically,
 8 but yes, I believe so, from what I recollect
 9 I believe that's correct. But I would also
 10 preface that, there was -- yeah. I'm sorry. 13:43:45
 11 I lost my train of thought.
 12 Q. Can you tell me how you went
 13 about creating the "Song: Take a Dive vs I
 14 Gotta Feeling" using the information from
 15 beatport that you obtained? 13:44:05
 16 MR. DICKIE: Object to the form
 17 of the question. Misstates the
 18 testimony with respect to the origin
 19 of this comparison.
 20 A. I would have to object too 13:44:14
 21 because I think what you're talking about
 22 is -- I think there's some privilege there
 23 too.
 24 BY MS. CENAR:

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1 Q. Your lawyers assisted you in
 2 making the comparison that was posted on
 3 this, the "Take a Dive" -- the actual audio
 4 sample?
 5 THE WITNESS: Do you want me to 13:44:33
 6 answer that, Dean?
 7 MR. DICKIE: No, if it's
 8 discussions with counsel you need not
 9 answer.
 10 A. I can't -- I can't really -- I 13:44:37
 11 can't disclose without forfeiting
 12 attorney-client privilege.
 13 BY MS. CENAR:
 14 Q. Who created the audio that you
 15 posted on your website which we've marked as 13:44:48
 16 Exhibit 27?
 17 A. Well, again, I don't recall
 18 what specific remix version. I can tell you
 19 that portion of this song obviously is my
 20 song "Take a Dive." I can tell you that I 13:45:06
 21 created that.
 22 As far as the other portion of
 23 it -- and I disagree with the term "create,"
 24 I can tell you what this is if you want me to

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1 answer that.
 2 Q. What is it, sir?
 3 A. This is a side-by-side
 4 comparison of the Black Eyed Peas vocals
 5 played alongside and manipulated, because I 13:45:34
 6 do recall for some reason there was
 7 equalization and other things and also
 8 compression -- I don't know how you get
 9 signed to Interscope Records and you don't
 10 use a compressor, but that's neither here 13:45:45
 11 nor -- this particular version is vocals
 12 along with the remix version, which I don't
 13 know what it is, played alongside my song.
 14 The version of their vocals was changed from
 15 128 beats per minute to 130. That's what 13:46:03
 16 that is.
 17 Q. All right. And did you create
 18 this audio file that was put on your website?
 19 THE WITNESS: Do you want me to
 20 answer that, Dean? 13:46:14
 21 MR. DICKIE: If you created it,
 22 you can answer that.
 23 A. I don't agree with the word
 24 "create," so I'd say no.

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1 BY MS. CENAR:
 2 Q. Did you make it?
 3 A. I don't agree with the word
 4 "make," but I'll elaborate to save some time.
 5 All I did was I took a version of what I 13:46:33
 6 recall was a remix version that had a lot
 7 less instrumentation, manipulated it
 8 through -- to make the vocals more easily
 9 heard, played it alongside my song to show
 10 that it was very obvious that the Black Eyed 13:46:55
 11 Peas sang their vocals to my music just to
 12 show as a comparison.
 13 Q. Did you also compare the guitar
 14 twang to the remix versions that you obtained
 15 from beatport? 13:47:09
 16 MR. DICKIE: Object to the form
 17 of the question.
 18 A. I don't recall. I mean, it was
 19 pretty -- it was pretty obvious. I don't --
 20 I honestly don't know if I ever did because I 13:47:16
 21 didn't feel I needed to. I mean, it was --
 22 it was pretty -- it was my opinion it was
 23 almost identical, so I don't think that I
 24 did, but I could be wrong. I just don't

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1 recall.
 2 BY MS. CENAR:
 3 Q. Was the guitar twang part of
 4 the remix items that you saw on beatport?
 5 A. Yes. 13:47:41
 6 Q. And that's based on your
 7 personal review of those remixes?
 8 A. Yes, but I will also concede
 9 that guitar twang is available everywhere.
 10 Q. What do you mean? 13:47:55
 11 A. I mean, you can go online right
 12 now, any one of you, and, in a remix version,
 13 get access to that guitar twang. It's
 14 everywhere. And even the remix versions I
 15 got off of Amazon.com, they had that specific 13:48:08
 16 version soloed out.
 17 Q. What did you purchase off of
 18 Amazon.com?
 19 A. A bunch of different remixes of
 20 "I Gotta Feeling" as well as other Black Eyed 13:48:20
 21 Peas songs.
 22 Q. And when you say it had
 23 something isolated out, what are you talking
 24 about?

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1 I don't really read music
 2 anymore. I've gotten lazy.
 3 Q. So each chord in the guitar
 4 twang has how many pitches in it?
 5 MR. DICKIE: Object to the form 15:36:41
 6 of the question.
 7 A. I don't understand that
 8 question either. It's got two notes.
 9 It's -- it's got two notes per the three keys
 10 that I have. I've got three keys. I don't 15:36:52
 11 have a stereo sequence. I've got three keys.
 12 And I'm telling you, as a
 13 songwriter and musician, I can tell that
 14 there are at least what I consider to be
 15 three layers because I can tell, first of 15:37:08
 16 all, that it's been layered, and the way that
 17 I can tell that, there's two -- well, to
 18 answer your question, make it short, there's
 19 two -- at least two notes per key that I
 20 have, the three multilayered samples. 15:37:21
 21 But it's not really -- I don't
 22 think that would be fair, because it's
 23 multilayered, so, I mean, what do you say if
 24 it's got three layers per three keys, is

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1 that. you know, three notes per key? I don't
 2 know.
 3 BY MS. CENAR:
 4 Q. Are any of the chords in root
 5 position? 15:37:38
 6 A. Root position? I don't even
 7 know what that means.
 8 Q. Okay.
 9 A. You got me.
 10 Q. Can you tell me how you 15:37:44
 11 recorded the guitar twang?
 12 A. Well, I believe I've answered
 13 that. I recorded -- first of all, Ensoniq
 14 has a sampler, which means you can -- it's
 15 with the SCSI you can either load the 15:37:59
 16 instruments up or you can sample from
 17 somewhere, which means you can have a CD and
 18 you can sample something in or you can load
 19 up the instrument via a CD-ROM or you can
 20 load it through the actual disk drive, the 15:38:12
 21 floppy drive, which I think only -- I rarely
 22 use that because it's only 2.44 megabytes per
 23 HD disk.
 24 But as far as recording it, I

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1 can't tell you from then but I can tell you I
 2 went back and deduced how I recorded it.
 3 Q. You say "I can tell you I went
 4 back and deduced how I recorded it." What do
 5 you mean by that? 15:38:47
 6 A. I don't specifically remember
 7 how I recorded it. What you're asking me is
 8 do I recall recording and the answer is no.
 9 But after looking at the NRG from loading up
 10 the instruments and going back and looking at 15:39:01
 11 the different instruments, I have an idea of
 12 how I recorded it from pattern and practice.
 13 Q. So are you saying that when --
 14 after you heard the Black Eyed Pea song, you
 15 can put your NRG file into the ASR-10 and you 15:39:16
 16 can deduce from that --
 17 MR. DICKIE: Object to the form
 18 of the question.
 19 BY MS. CENAR:
 20 Q. -- how you came up with it? 15:39:24
 21 MR. DICKIE: Misstates his
 22 testimony.
 23 A. I'm going to have to go with
 24 him.

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1 MR. DICKIE: You can answer the
 2 question, Mr. Pringle.
 3 A. Can you repeat the question
 4 please? I'm sorry.
 5 (The reporter read back the 15:39:55
 6 following portion of the preceding
 7 record.)
 8 "QUESTION: So are you saying
 9 that when -- after you heard the Black
 10 Eyed Pea song, you can put your NRG 15:39:13
 11 file into the ASR-10 and you can
 12 deduce from that --
 13 "MR. DICKIE: Object to the
 14 form of the question.
 15 "QUESTION: -- how you came up 15:39:24
 16 with it?"
 17 (End of readback.)
 18 A. I don't understand -- I object
 19 to the form too. I don't understand what
 20 you're saying. 15:40:00
 21 BY MS. CENAR:
 22 Q. What don't you understand about
 23 it?
 24 A. The whole thing, that I can

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1 deduce how I came up with what, the entire
 2 song, the specific notes? What?
 3 Q. Well, can you tell me
 4 specifically how you recorded the chords that
 5 are in the guitar twang that's reflected in 15:40:13
 6 the NRG file that you produced in this case?
 7 A. No. That was, you know, 10,
 8 12 years ago. I mean, I'm actually shocked
 9 that I had, still, a version of that, you
 10 know, in NRG. 15:40:32
 11 I mean, the first thing that
 12 came to my mind -- I know my attorney is
 13 probably "don't say this" -- was, "Man, I
 14 wonder if I still have evidence to show that
 15 I have this." 15:40:42
 16 So, no, I can't tell you
 17 specifically because it's been too long. I
 18 can't even tell you how I recorded the songs,
 19 my last album from 2006, I don't recall.
 20 Q. So on the NRG file, there's a 15:40:54
 21 track in there called delay sample; is that
 22 the guitar twang?
 23 A. Well, that's the instrument.
 24 It's got various layers and various samples

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1 in there. From what I recall, it's got a
 2 bass sample that's been put up and down
 3 chromatically on the keys. It's also got the
 4 delay sample, which is a resample, which is
 5 basically something that sounds like it's 15:41:24
 6 been run through various effects, maybe three
 7 or four different effects, which is about
 8 typical.
 9 Then it's got -- it's got the
 10 bridge bass, bass line, because the bridge 15:41:36
 11 had to be one sample because in the middle --
 12 in the bridge of "Take a Dive," there's a
 13 part where the drums go (demonstrating) and
 14 it cuts off -- for me to be able to control
 15 that base without having the delay continue 15:41:53
 16 to go and just cut off.
 17 And then it's got the guitar
 18 twang sequence and I believe there's
 19 something else. So that actual instrument
 20 delay sample, that's where the guitar twang 15:42:02
 21 multiple -- I think it's six. I think it's
 22 six different layers, and then, yeah, the
 23 delay sample, but it has -- it's not just a
 24 guitar twang. It has other parts that play

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1 MIDI through there, through the keyboard, so
 2 I think it's maybe like four or five
 3 different parts or something like that. And
 4 I believe that it's -- I think it's track 7.
 5 I could be wrong, though. 15:42:33
 6 Q. So after you create the guitar
 7 twang, how do you insert it into a
 8 preexisting song, the "Take a Dive" original?
 9 A. Well, I mean, you can load
 10 up -- that's a good question. Hold on, let 15:42:46
 11 me think for a second. It's been so long
 12 since I used that keyboard, I'm trying to
 13 think how I would do that.
 14 I mean, I could tell you how
 15 it's possible. I couldn't tell you 15:43:10
 16 specifically how I did it. But --
 17 Q. But you did do it?
 18 A. Yeah, I did it.
 19 Q. But you can't tell me how you
 20 did it? 15:43:19
 21 A. 12 -- I can tell you how I
 22 think I did it. There's multiple ways to do
 23 it. I can tell you a couple of different
 24 ways if you want me to.

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1 Q. Well, let's just start with you
 2 don't recall how you actually did it; is that
 3 what your testimony is here?
 4 A. I don't specifically recall the
 5 manual steps exactly how I did it. I have an 15:43:37
 6 idea of how I did it. I think the way that I
 7 did it -- if I had to think about it, I think
 8 the way that I did it was I had already had
 9 the sequence in "Faith" based upon the
 10 "Faith" vocals. I usually call them unnamed 15:43:58
 11 instruments, and I took the samples and you
 12 have to load it up into the keyboard. You
 13 have to create a new instrument or load that
 14 instrument.
 15 Then what you do is you take 15:44:14
 16 the samples and each individual sample and a
 17 sample is you can pan it left or right or you
 18 can have mono. You take each individual
 19 sample, then you copy it to another
 20 instrument, the delay instrument, and you 15:44:30
 21 copy those samples to it.
 22 And then usually because it was
 23 such a crappy instrument, the pitch would be
 24 off, so then you have to adjust the pitch and

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1 I think the transposition is usually off too,
 2 so you adjust that to make sure it sounds --
 3 and a lot of the pitches that I have in my
 4 songs, because samples were very difficult --
 5 good samples were difficult to come by. 15:44:56
 6 If there was a sequence,
 7 instead of trying to compress or extract it,
 8 I would keep the same pitch, which might not
 9 be the regular pitch of a tuned keyboard or
 10 piano. 15:45:09
 11 So that's the way that I -- I
 12 think that's the way, I don't specifically
 13 recall, but I believe that would be the most
 14 logical way to do it, is to copy the
 15 instrument into the RAM, then copy those 15:45:18
 16 specific samples over to another instrument.
 17 Then save that instrument onto the hard
 18 drive.
 19 Q Onto what hard drive?
 20 A. Well, the hard drive that the 15:45:30
 21 NRG made a copy of. I believe, from what I
 22 recall, I had multiple hard drives, and I've
 23 seen a picture, actually, of my old studio.
 24 It was -- I'm not sure exactly which hard

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1 drives they were, but they were removable
 2 hard drives. Ensoniq was very specific about
 3 which hard drives you could use. They only
 4 tested a few of them.
 5 But just save it -- I would 15:45:59
 6 have backup drives, removable drives, so I'd
 7 save it onto one drive. And because these
 8 drives corrupted every two weeks to 30 days,
 9 I would make backup copies, so I would save
 10 it onto the hard drives. And that's what the 15:46:12
 11 NRG files are, is snapshot copies.
 12 When I took that drive, I had a
 13 Glyph removable drive. I would take it out
 14 of the Glyph, and then I had a computer that
 15 was Windows 98-based that had the same 15:46:26
 16 identical hard drive or one that was
 17 compatible.
 18 So you take the drive out of
 19 here, you stick it into Windows 98, then you
 20 can use Ensoniq Disk Manager because Windows 15:46:37
 21 doesn't recognize Ensoniq. And Gerald
 22 Geibler, who made Ensoniq Disk Manager,
 23 actually made it -- he made -- he kind of
 24 back-fudged a little bit and allowed it to be

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1 an NRG file that Nero would be able to burn
 2 to a CD-ROM. But I would save the actual
 3 instruments onto that drive.
 4 And I think you could have SCSI
 5 chains and it's possible that I had more than 15:47:02
 6 one IDE, so it's possible that I saved
 7 instruments on different SCSI chain drives to
 8 load up the banks, and that's one of the
 9 reasons why maybe the banks don't work
 10 because you have to get the IDE's right and 15:47:16
 11 you have to have the exact specific daisy
 12 chain configuration.
 13 Q. Can you explain for the record
 14 what a bank is, please?
 15 A. A bank is a place where you 15:47:27
 16 keep your money.
 17 Q. Uh-huh. And that's the context
 18 that you were referring to in your last
 19 answer?
 20 A. Well, you've got to be 15:47:33
 21 specific. Are you talking about a sound
 22 bank? There's no such thing as a bank. In
 23 Ensoniq, there were sound banks. Is that
 24 what you're referring to?

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1 Q. Have you ever heard the word
 2 "bank" in connection with this song?
 3 A. No. Not like that. I've heard
 4 of sound bank.
 5 Q. Okay. So is there -- when you 15:47:53
 6 saved the "Take a Dive" derivative work, did
 7 you save it in any particular format?
 8 A. Ensoniq format, yes.
 9 Q. And what was the format that
 10 you saved it in? 15:48:12
 11 A. Are you talking about the
 12 instrumentation or are you talking about
 13 loading up all the instruments to play at one
 14 time?
 15 Q. I'm asking you how you saved it 15:48:19
 16 when you allegedly created this.
 17 A. I don't recall, but normally --
 18 I can tell you normally what I did. Normally
 19 what I would do is --
 20 Q. Well, first, sir, you don't 15:48:29
 21 recall specifically what you did for "Take a
 22 Dive" derivative; is that true?
 23 MR. DICKIE: Objection,
 24 misstates his testimony.

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1 A I don't understand what you're
 2 saying either.
 3 BY MS. CENAR:
 4 Q. Do you recall specifically for
 5 the "Take a Dive" derivative song that's at 15:48:40
 6 issue in this case how you specifically saved
 7 it?
 8 A. No, but I don't recall the
 9 exact time and, you know, 12:35 and
 10 40 seconds, but I can tell you how I 15:48:57
 11 typically saved songs and related sound banks
 12 and instruments.
 13 Q. Okay. Share that with us,
 14 then.
 15 A. Well, the way that you save a 15:49:08
 16 specific song bank along with this -- you
 17 have several different things you have to
 18 save. First you have to save the song, then
 19 you have to decide, it's got -- I think it's
 20 like 200-and-something different effects. 15:49:21
 21 You have to decide which effect that you want
 22 that sound bank and that song to play in, or
 23 no effect at all, which is actually just an
 24 effect in itself because you can resample at

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1 different sample rates.
 2 So let's say you wanted --
 3 "Take a Dive," for instance, what I had to do
 4 was, first of all, I had to specifically save
 5 each and every instrument to a specific 15:49:42
 6 location. Then I had to save the song also
 7 to a specific location. Then I had to create
 8 something called a bank, a sound bank, and it
 9 automatically defaulted, it said "sound bank
 10 1." 15:50:03
 11 You had to create -- you had to
 12 save the sound bank, but before you did that
 13 you had to, because of the technology, you
 14 had to physically go back to each place and
 15 load up each instrument again, because once 15:50:15
 16 you save that sound bank it's going to load
 17 from specific locations which may be
 18 different hard drives or one hard drive.
 19 So once you load up the
 20 sequence or the song again, you put it back 15:50:27
 21 in the effects where it was at or where you
 22 want it to be and then you load up each
 23 individual -- each and every single
 24 instrument.

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1 Then at that time, you save the
 2 sound bank to a specific location. The only
 3 thing a sound bank saves -- and this is the
 4 way that "Take a Dive" was done, as well as
 5 all my songs -- it recalls exactly where the 15:50:46
 6 last instrument was saved (demonstrating).
 7 So that's how I would do it.
 8 And I would put mine -- I would
 9 create directories for each song, and since
 10 "Take a Dive" was in a specific directory, so 15:51:00
 11 the way I would do it, and I did this
 12 consistently every time, that's why I can
 13 tell you that I know this is how it's done
 14 even though I don't specifically recall at
 15 that time how it was done. 15:51:12
 16 I would save the effects
 17 because a lot of times I would tweak the
 18 different effects, and even though you can
 19 load up different effects for that sound
 20 bank, unless you specifically save that 15:51:23
 21 effect, the stock effect is not going to
 22 sound like what you've tweaked.
 23 So I would save the effect, I'd
 24 save the song, I'd save all the instruments.

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1 I'd load them back all up again, then I would
 2 save the sound bank. That's how it was
 3 saved. And I would usually save it to
 4 multiple drives on multiple SCSI IDE's.
 5 Sometimes, however, I would 15:51:51
 6 accidentally forget to load up the
 7 instruments before I saved it, so sometimes
 8 I'd save something over here. Even though
 9 right here it says this is the same
 10 instrument as this, when you try to load up 15:52:02
 11 the sound bank it's not going to load up.
 12 You're going to get an error.
 13 Q. What happens when you get an
 14 error when you try to play it back?
 15 A. Well, I mean, you would have -- 15:52:12
 16 let's say you have this drive over here.
 17 You've saved everything there. Even though
 18 you didn't load it back up from this drive,
 19 and it's actually the sound bank is looking
 20 for that specific drive, you'll just get an 15:52:23
 21 error. It might just load the song and then
 22 anything else.
 23 But in this particular case,
 24 specifically with "Take a Dive" and also

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1 "Take a Dive" Dance Version, I think that's
 2 what I did. I think I was actually -- I
 3 didn't load them back up and then save the
 4 sound bank. So it's looking for another IDE.
 5 And the way that SCSI IDE's 15:52:48
 6 work, you have one drive that's daisy-chain
 7 connected to another drive that's connected
 8 to another, so it'd literally be like this.
 9 And I might have had -- the
 10 song bank might be looking for what's over 15:53:03
 11 here, which is identical to what's here; the
 12 only difference is this is just a copy and
 13 the song bank is looking for the different
 14 IDE, which I don't have anymore because I
 15 don't have the hard drives. 15:53:14
 16 So it's identical to what was
 17 over here, the only difference is this -- the
 18 song bank is not correct but the
 19 instrumentation is identical to what I
 20 originally made. 15:53:24
 21 Q. The instrumentation is
 22 identical, but not having the song bank, if
 23 you go to use that NRG file now, what do you
 24 have to do to get it to play like you had it

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1 attorney-client work product, the -- I don't
 2 know what you would call it, the dichotomy --
 3 I actually wrote down where you can load each
 4 individual instrument, which song and which
 5 sound effect, and I believe my attorney has a 15:54:36
 6 copy of that.
 7 Q. So the NRG file is what you
 8 ultimately saved that on, each one of those
 9 instruments you have to know where to
 10 manually load them up into the ASR-10? 15:54:46
 11 A. Yes.
 12 Q. Okay. And is that information
 13 that you know just because you know the song,
 14 or is that information that I could get that
 15 disc cold and know how to load it up? 15:54:58
 16 A. If you heard the song, if you
 17 knew what the song sounded like, you could do
 18 it, just trial and error.
 19 Q. But if I didn't and I just had
 20 the disc and I needed -- 15:55:11
 21 A. Yeah, you could still do it.
 22 Q. How would I know which
 23 instrument to load where on the ASR-10?
 24 A. Trial and error. I mean, it's

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1 in 1999?
 2 A. Just load up the -- since the
 3 directories have the song bank, they have the
 4 song and the effects as well as the
 5 instruments, just load each individual 15:53:45
 6 instrument in the proper place, load up the
 7 sequence, don't worry about the song bank
 8 because it's corrupted. Load the effect
 9 that's corresponding to that.
 10 Q. But how -- do you have to do 15:53:56
 11 that manually?
 12 A. Yes, you have to do it
 13 manually.
 14 Q. And how do you know?
 15 A. That it's working? 15:54:02
 16 Q. No, how do you know how to
 17 manually load them up?
 18 A. Well, I -- when I went back, I
 19 ran into the problem -- I didn't recall where
 20 they were at, so what I did was I loaded up 15:54:12
 21 the song and I would play it until -- you
 22 know, I would switch things around until it
 23 finally played properly.
 24 But I actually created, as

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1 not like you -- I mean, you know, that's what
 2 I did. I mean, I didn't know when I first
 3 went and I looked at the NRG file, it's like,
 4 oh, crap. All I did was -- I can tell you I
 5 always put the drums in space 1. 15:55:33
 6 But one of the ways that I also
 7 do this, and I think this is the same way
 8 with the "Take a Dive" -- I could be wrong --
 9 is you have eight instruments, and what I
 10 tried to do was to save -- because besides 15:55:46
 11 each instrument it had file 1, file 2, file
 12 3, file 4, file 5. What I tried to do was
 13 save place 1, track 1, file 1; place 2, track
 14 2, file 2. So if you looked at that you
 15 could -- I mean, it's kind of 15:56:05
 16 self-explanatory. You can do it.
 17 I mean, my attorney has a copy
 18 of the different -- the different banks, if
 19 that's what you're looking for. I don't have
 20 a problem turning that over. 15:56:15
 21 Q. Okay.
 22 A. Giving you that information, if
 23 that's a problem.
 24 Q. The creation of the NRG image

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1 file, could you explain to me -- you did
 2 that, right? You created that --
 3 A Yes.
 4 Q -- NRG image file? Would
 5 anybody else participate in creating that NRG 15:56:37
 6 image file?
 7 A No, not that I recall.
 8 Q Can you tell me, was that in
 9 your home studio?
 10 A Yes. 15:56:48
 11 Q Or did you do that somewhere
 12 else?
 13 A No, that was at the home
 14 studio.
 15 Q And what is the purpose of 15:56:54
 16 creating an NRG image file?
 17 A Well, for a couple of reasons.
 18 The first one was the removable drives
 19 were -- they would get corrupted. Also the
 20 ASR-10 would miswrite on a regular basis. So 15:57:08
 21 I searched for a way to back up something
 22 that was read-only CD-ROM instead of a hard
 23 drive, because those hard drives would
 24 corrupt, and I looked around. I found one of

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1 the software engineers, his name is Gary
 2 Giebler, and you can go to giebler.com,
 3 G-I-E-B-L-E-R.
 4 He -- back in 1999, he created
 5 something called Ensoniq Disk Manager, and 15:57:40
 6 what his -- the way -- well, anyways, to make
 7 a long story short, for me to -- what I was
 8 doing to create the NRG file, the Ensoniq
 9 Disk Manager was compatible with Windows 98,
 10 Windows 2000 and Windows 95 and you had to 15:57:53
 11 have a floppy drive, a SCSI floppy drive,
 12 which I don't even know if they make any
 13 more.
 14 Anyways, you basically -- I
 15 would put the disc in there and the reason 15:58:05
 16 why I was doing that to make copies is
 17 because the hard drives would always corrupt,
 18 so I wanted a way to store all of these NRG
 19 files where they couldn't get corrupted ever
 20 so that I would have copies of them. 15:58:14
 21 And if my hard drive messed up,
 22 I could hook up a CD-ROM, put that disc in
 23 there and then recopy and I would have to
 24 load all the instruments back and then save

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1 them again, I could just recopy and format
 2 the disc. So that's why I was -- I was
 3 making NRG files because I wanted a hard copy
 4 that couldn't corrupt.
 5 Q Okay. And the NRG image file, 15:58:36
 6 after that's made, how do you -- can you just
 7 take the disc with the NRG image files on it
 8 and stick it into the ASR-10 and it would
 9 play?
 10 A No. 15:58:55
 11 Q Explain to me what has to be
 12 done.
 13 A Well, I have to backtrack here.
 14 For you to be able to record in Ensoniq
 15 proprietary format -- Ensoniq is not 15:59:04
 16 compatible with any Windows version at all.
 17 The only thing that Ensoniq Disk Manager
 18 would do is take a snapshot of the actual
 19 drive, which is basically -- and I don't know
 20 how that works because I'm not a computer 15:59:20
 21 guy, but it would take a snapshot of it and
 22 it would create it into an NRG format that
 23 Windows could recognize through Nero.
 24 So once you get a snapshot of

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1 that drive it's still not compatible with
 2 Windows, which means you can't manipulate
 3 anything inside of Windows. You have to
 4 actually get Nero, you have to go to that NRG
 5 file, burn that image onto a disc. Once you 15:59:50
 6 burn it onto that disc, Windows will no
 7 longer recognize it. You can then take that
 8 disc that is the NRG image file and put it
 9 into a CD-ROM and hook it up to a -- well, a
 10 compatible CD-ROM to Ensoniq. You can now 16:00:06
 11 hook it up to the Ensoniq and you can
 12 read-only information.
 13 But at that point in time you
 14 have to record the operating system, which is
 15 the only one that I'm aware of that does it, 16:00:17
 16 is Ensoniq Disk Manager. It will then, when
 17 you turn the Ensoniq on it will boot up from
 18 the CD-ROM the operating system, then you can
 19 access things on it and load things up but
 20 you can't save. 16:00:29
 21 Q So the operating system, is
 22 that also in your NRG image file?
 23 A Yes.
 24 Q Okay. And so you load that,

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1 you have to take that image file, burn it
 2 onto another CD and then use that attached to
 3 the ASR-10 to load it into the ASR-10?
 4 A. Yes. Well, I think now -- I
 5 think with today's technology, yes, that's 16:00:55
 6 true. but there's also an exception to that.
 7 There's other programs, I
 8 think, that will mount that NRG file, but I
 9 don't think it will mount it with Ensoniq.
 10 Q. But for purposes of what you 16:01:10
 11 did to, say, for example, create the deposit
 12 copy for your copyright registration, was
 13 that made off this NRG file?
 14 A. I believe so, yes.
 15 Q. All right. Could you explain 16:01:25
 16 to me what steps you took to get it off the
 17 NRG file to create the deposit copy?
 18 A. Well, I had that disc that's in
 19 Dave Gallant's office. I accessed one of the
 20 NRG files, which I believe is disc 5. I 16:01:47
 21 burned a copy of that disc, I believe with
 22 Nero. Took that -- it only worked with
 23 CD-ROM's. I put it into a compatible CD-ROM
 24 SCSI-connected device to the Ensoniq, then I

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1 loaded up each particular instrument in the
 2 proper places, I loaded in the sound bank, I
 3 loaded in the song.
 4 Then I took that particular --
 5 the outputs for stereo right and left, and I 16:02:15
 6 recorded it -- actually, you know what, I'm
 7 sorry. I may be -- I'm thinking of something
 8 else.
 9 I think the one that's in the
 10 Copyright Office -- and I apologize for going 16:02:29
 11 through all that. I think that the one in
 12 the Copyright Office is actually one that was
 13 previously recorded on Windows 98, but I
 14 think what happened was because of the bit
 15 rate from 1998, which now you can -- I think 16:02:49
 16 it's like 768-bit rate or something. I think
 17 what I did was, I may have -- it may have
 18 been on a disc or something. I've got to be
 19 honest with you, I don't recall.
 20 THE WITNESS: Do you recall? 16:03:05
 21 MR. DICKIE: It's your best
 22 recollection, Mr. Pringle.
 23 A. It was the year I recorded -- I
 24 don't think I recorded. I think it was an

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1 old copy from something I had that was on an
 2 old track, because I would basically, like I
 3 said before, I would continually back up
 4 files.
 5 It was either from a hard 16:03:23
 6 drive, a CD-ROM, or I may have recorded onto
 7 my computer, which is possible. I think -- I
 8 don't recall which one exactly it was that
 9 was filed in the Copyright Office, but
 10 they're all identical, whether it was 16:03:36
 11 recorded then or now. When you play -- when
 12 one of the instruments in the song bank are
 13 playing they're all the same, because it's a
 14 digital copy. So I honestly couldn't tell
 15 you because I don't know. 16:03:50
 16 BY MS. CENAR:
 17 Q. The old copy that you think you
 18 may have used or could have used, where is
 19 that?
 20 A. I believe it's been provided to 16:03:59
 21 you and to my attorney.
 22 Q. Is that the NRG -- on an NRG
 23 file?
 24 A. Oh, I'm sorry. Yeah, I didn't

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1 file the NRG file with the Copyright Office.
 2 I only filed an MP3.
 3 Q. Where did that MP3 come from?
 4 A. It came from Ensoniq. It came
 5 from that -- it originally came from the 16:04:18
 6 CD-ROM or the disc that the CD-ROM is a copy
 7 of, and it was just -- all it was was it's
 8 the same tracks that are on the Ensoniq when
 9 you play it. If you hook it up to a speaker,
 10 it's going to sound the same, it was just 16:04:31
 11 recorded through the outs.
 12 So it's the same identical
 13 tracks, the MP3; it's just mixed down to a
 14 format that the Copyright Office will accept.
 15 Q. But where did the sounds on 16:04:42
 16 that MP3 come from?
 17 A. It came from the Ensoniq ASR-10
 18 that was loaded either through a hard drive
 19 or a CD-ROM that was the NRG file that was
 20 recorded. The original sounds came from 16:04:55
 21 ultimately the removable drive where I
 22 originally saved the song. Whether it was
 23 that drive, it was an NRG copy of that drive
 24 or it was the actual drive itself, I don't

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1 know because I can't tell personally the
 2 difference between if I recorded a new one as
 3 attorney-client work product or as the old
 4 one.
 5 And because I've also 16:05:16
 6 transferred and converted the older -- the
 7 older MP3's that I have to a new bit rate and
 8 also over time onto new computers, I can't
 9 tell because you can rename them. You can
 10 also change the bit rate. But I think 16:05:30
 11 originally it may have been a wav file too.
 12 Q. What do you mean by the
 13 "mixed-down format" so the Copyright Office
 14 would accept?
 15 A. Well, I believe that online is 16:05:44
 16 where I filed the copyright, and I could be
 17 wrong, I'd have to look again, but they only
 18 accept I think -- I think they only accept
 19 MP3's. I don't know. I think that the
 20 version -- I had to basically take it from a 16:06:01
 21 wav file, which would have been like 60
 22 megabytes. I'm not going to sit there all
 23 day in a government office uploading
 24 something like that. I believe I uploaded it

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1 as an MP3. I could be wrong, it might be a
 2 wav file.
 3 But they only take certain
 4 formats, so that I had to convert it from
 5 whatever I had maybe to a lower bit rate so 16:06:24
 6 that they would accept it. Because they only
 7 accept certain bit rates. They're not going
 8 to accept a 767-bit rate which basically
 9 means it's sampling more which means the file
 10 may be this big and they say they can only 16:06:37
 11 accept it if it's this big. So I may have
 12 had to convert it down to something smaller
 13 which would degrade the sound, so --
 14 Q. Mr. Pringle, where did you get
 15 the wav file or the MP3 to create that? Did 16:06:48
 16 that come from use of this NRG file?
 17 A. Yes, ultimately the source --
 18 it was either -- the source of the MP3 is the
 19 NRG file or the original hard drive. So the
 20 NRG -- those things are identical in content. 16:07:07
 21 Q. But the NRG and the original
 22 hard drive, as we sit here today, the
 23 original hard drive doesn't exist, does it?
 24 A. I think it exists in the

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1 land- -- well, I would say that in that
 2 format, in the hard drive, but the NRG is
 3 just an identical copy of that hard drive, so
 4 I would say yes, it does exist but it doesn't
 5 exist in that format. It exists -- 16:07:31
 6 Q. But at the time that you made
 7 the deposit copy for the Copyright Office,
 8 did the original hard drive from 1999 exist?
 9 A. Not in my possession.
 10 Q. Okay. So when you made the 16:07:43
 11 deposit copy for the filing with the
 12 Copyright Office in 2010, where did you get
 13 the sounds to make that?
 14 A. You mean where did I get the
 15 full version of it? I got it from -- it was 16:08:02
 16 either an -- like I said before, it was
 17 either an original MP3 that was saved on a
 18 CD-ROM or it was -- or it was something that
 19 was saved on a drive that was brought, you
 20 know, for each drive that I had forward, or 16:08:17
 21 it was on an audio disc that was something
 22 that was converted or it was recorded
 23 specifically off the NRG file and just mixed
 24 down.

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1 Q. Okay. Where is --
 2 A. I don't recall.
 3 Q. -- where is the CD-ROM that you
 4 say has the original MP3?
 5 MR. DICKIE: Object to the form 16:08:40
 6 of the question. It misstates the
 7 testimony.
 8 A. I guess I don't understand that
 9 question either.
 10 BY MS. CENAR: 16:08:48
 11 Q. You filed for registration of
 12 copyright of the "Take a Dive" Dance Version
 13 in 2010, correct?
 14 A. No, not really. It was -- my
 15 attorneys are actually the one. I was -- I 16:09:04
 16 did put the information. I didn't pay for
 17 it. It was a co-filing.
 18 Q. It's a co-filing? What does
 19 that mean?
 20 A. Well, I can't -- I can't go 16:09:14
 21 into it because it would be attorney-client
 22 privileged information. I can tell you that
 23 the actual MP3 that was upload- -- it was
 24 uploaded to the Copyright Office and it was

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1 uploaded ultimately at the end from my
 2 computer, I believe that's correct, but my
 3 attorney paid for it.
 4 As far as where did I get the
 5 actual MP3 or wav file, whatever it was, it 16:09:41
 6 would have come, obviously, from my computer.
 7 But where did that originally come from, like
 8 I've said repeatedly, I don't recall.
 9 But ultimately it came from
 10 that -- the Ensoniq, which was played into 16:09:59
 11 some -- either a computer or the DAT machine.
 12 It was -- the ultimate copy was from that
 13 hard drive, which we made a copy of, which
 14 was played, which was owed to the
 15 instruments, which was either played to a 16:10:17
 16 computer that recorded it or it was played to
 17 a Sony DAT machine or some other sort of
 18 recording device and then mixed down
 19 ultimately either on a computer that I don't
 20 have or onto -- maybe it was recorded onto a 16:10:28
 21 disc from that computer as an MP3 or a
 22 wav file and then converted ultimately to the
 23 format that was on my computer that was given
 24 to the Copyright Office. I don't know any

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1 other way to explain it to you.
 2 Q. Well, I don't think you're
 3 really answering my question so I'm going to
 4 try it one more time.
 5 At the time you filed for 16:10:52
 6 copyright registration in 2010 for the "Take
 7 a Dive" Dance Version, did you have an
 8 original CD of that sound recording from --
 9 that existed in 1999?
 10 A I don't recall. 16:11:10
 11 Q. You don't recall?
 12 A I've answered this question.
 13 Q. All right. We're in 2011. Do
 14 you have an original sound recording of the
 15 "Take a Dive" Dance Version in your 16:11:20
 16 possession today?
 17 A. The original... I don't know
 18 how to answer that. I mean, the sound
 19 recording, no matter how many times you play
 20 from the NRG or from the hard drive through 16:11:35
 21 the Ensoniq, it's the original sound
 22 recording.
 23 Q. I understand that that's your
 24 position. What I'm trying to understand is

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1 whether you actually had a CD from 1999 or
 2 whether you made one from the NRG file
 3 specifically to submit to the Copyright
 4 Office in 2010.
 5 A. I don't have it -- 16:11:58
 6 THE WITNESS: Did you want to
 7 say something?
 8 MR. DICKIE: No.
 9 A. I don't have an original CD
 10 with that sound recording on it from 1999. 16:12:05
 11 As far as an audio recording, I do have an
 12 original sound recording in Dave Gallant's
 13 office from 1999 with that sound recording.
 14 I think we're into semantics here.
 15 BY MS. CENAR: 16:12:23
 16 Q. Is that the NRG file?
 17 A. Yes. The sound recordings --
 18 Q. How did you make -- did you
 19 make the MP3 that you submitted to the
 20 Copyright Office in 2010 from that NRG file 16:12:31
 21 that is in Mr. Gallant's possession?
 22 A. I don't recall, like I've said
 23 multiple times. I'm not going to answer this
 24 question again. I think I've been very

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1 clear.
 2 The original sound recording
 3 ultimately -- I think you're trying to fit a
 4 round peg into a square hole. We're not
 5 going to agree on this position. I think 16:12:54
 6 I've explained it more than adequately. I
 7 don't know any other way to explain it to you
 8 and to be honest with you, I'm sick of -- I'm
 9 sick of talking about it. I don't know any
 10 other way to explain it to you, ma'am. I'm 16:13:08
 11 sorry.
 12 I think you've asked me
 13 specifically where did I get it from, and I
 14 told you I don't recall. You asked do I have
 15 an original CD and I've told you that I've 16:13:16
 16 had an NRG file that's on the original CD
 17 with the sound recording.
 18 You keep trying to -- I don't
 19 know what -- I don't know any other way to
 20 explain it to you and I'm done, I'm not going 16:13:27
 21 to answer your question any more about that
 22 subject, that specific question.
 23 Q. Would you kindly tell the Court
 24 what steps you took to create the MP3 that