

From: Tal Dickstein
Sent: Tuesday, August 16, 2011 10:35 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,

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 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' deps 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.
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

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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.'
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 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 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.

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 was 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 is 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; Cengar, 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; Cengar, 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



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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'; 'greeley@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

