

EXHIBIT 6

For Opinion See [191 F.Supp.2d 1087](#) , [114 F.Supp.2d 896](#) , [2000 WL 1170106](#) , [2000 WL 35727155](#) , [2000 WL 1009483](#)

United States District Court, N.D. California.
A&M RECORDS, INC., a corporation, et al.,
Plaintiff,

v.

NAPSTER, INC., a corporation, and does 1 through
100, Defendants.
No. C-99-5183.
June 20, 2000.

Deposition of David J. Teece, Ph.D.

Name of Expert: [David J. Teece, Ph.D.](#)

Area of Expertise: Business Administration >>
Consultant/Strategy

Case Type: Intellectual Property >> Copyright

Jurisdiction: N.D.Cal.

Representing: Plaintiff

REPORTED BY: BETTY A. CALLIES CSR 11092
(1-94694)

EXAMINATION BY MR. STEELE

MR. STEELE: Q. Could you introduce yourself on
the record.

A. My name is David J. Teece, T-E-E-C-E. I live at
227 Tunnel Road in Berkeley.

Q. It is Dr. Teece; isn't it?

A. Yes.

Q. Dr. Teece, about how many times have you testi-
fied under oath?

A. I don't know for sure; quite a number.

Q. It would be in the dozens; wouldn't it?

A. Yes.

Q. About how many times have you testified in
court?

A. About a dozen or so.

Q. I'm not going to belabor some of the introduct-
ory points that are often covered in depositions, all
the mechanics of it, but I do want to ask a couple
questions about your understanding of where we
are in the case. It's fair to say that you have pre-
pared a report?

A. That's correct.

Q. I'm going to refer to that as the report or the
Teece report; I hope you understand what I mean.

unless he spoke about that document with some-
body before he saw it, which of course you could
ask him about.

MR. STEELE: I understand.

Q. To the best of your knowledge as of the time the
report was completed had you seen with your own
eyes internal documents from the labels you refer-
enced about their plan for the digital download
market?

A. With respect to internal documents, no.

Q. But you had seen with your own eyes what I
think you characterized as press announcements
and the like regarding their plans?

A. Yes.

Q. And you saw such things prior to completing the
report?

A. Yes.

Q. And you also had discussions with these five
gentlemen prior to completing the report?

A. Correct.

Q. Was any of the things mentioned in the press announcements part of the discussion?

A. Yes.

Q. I'm going to get into it in detail, to the extent it's there. Well, okay, if I ask you have covered encryption and watermarking. Now moving to pricing, this may sound incredibly obvious, but what do you mean by pricing?

A. I mean not just the price one is going to charge for a recording, but the bundling price. What is the price one is going to charge for a dozen, or in the digital market you can pick any number you want. They don't necessarily come in discrete packages.

So the question is volume pricing, bundle pricing, what price points make sense for this channel as compared to other channels. There is obviously a complex set of issues there that need to be worked through.

Q. Let me stop you there. What specific pricing proposals or initiatives did you discuss with these representatives of labels?

A. I'm not sure I discussed any specific initiatives.

Q. Let me back up a minute to the encryption watermarking issue. What are the present plans of the labels referenced on page 12 with respect to encryption and watermarking?

A. I'm not sure if I was actually told what specific plans these companies had. I was simply identifying encryption and watermarking as being an important set of issues that had to be worked through.

Q. With respect to pricing which we've been discussing, what are the current plans of the labels you talked to with respect to pricing in the digital download market?

A. I cannot tell you specifically what the specific plans are. The companies were each working on pricing issues and had different views, and in some

cases they were experimenting with different price points to see what kind of similar reaction they would get.

Q. Let me follow up on that. You said they had different views with respect to pricing. How concrete can you be; can you tell me this company had this view and that company had that view?

A. No.

Q. You say that they are experimenting. How specific can you be; can you tell me what the experiments are and who were doing them?

A. I believe there was at least two of the companies who participated in something that was known as the Madison project, which is in San Diego, where digital downloads were sold over a cable network using IBM encryption technology.

Q. Do you recall which two labels?

A. No, I don't. It may have been more than two.

Q. As of the time you wrote the report, did you have an understanding what current plans, if any, those two companies had with respect to pricing digital downloads?

MR. GOLDSMITH: He doesn't remember who they are or even if there are more than two.

MR. STEELE: Q. Do you recall that it was two, precisely two companies that were participating in the Madison project or not?

MR. GOLDSMITH: Objection; asked and answered.

THE WITNESS: I believe it was more than two. I know there were at least two.

MR. STEELE: Q. Can you identify which companies it was?

A. Well, the two that were, two of the five we've talked about were involved, and there may have

been others. I can't remember which two as I sit here right now.

Q. Even though you can't remember which company it was, as of the time you wrote the report, did you know what those participating companies' intentions were with respect to pricing in the digital download market?

A. No, nor am I suggesting they necessarily knew themselves. That was constantly a matter of discussion, review and continuing analysis.

Q. Now, we have been talking about digital rights management issues and we've discussed encryption and watermarking. We've discussed pricing. Were there any other digital rights management issues discussed with these labels?

A. Yeah, there were issues around standards that I mentioned before, and whether or not the companies might work with manufacturers of hardware to create devices that would be resistant to copying, or at least would enable them to collect for use of intellectual property; perhaps that's a better way to put it.

Q. This is another basic question. Can you give me a working definition of standards in this context?

A. Yes. It will be an economist definition, not a technical definition. MP3 is a standard. We are talking about essentially the way that the digital information is arrayed and compensation on a per download basis?

A. Certainly I'm aware that that's one possible revenue model. I don't remember whether anyone mentioned that specifically. They may well have done so.

Q. But you don't have any recollection of it?

A. Well, I do recall discussing pricing on a per download basis, and the question of sampling - you know the question: Do you let someone sample; and if so, how much and how?

Q. Let me back up. As of the time you signed off on the report, what were the plans and intentions of these labels with respect to charging in a digital download market on a per download basis?

A. I don't remember the specifics.

Q. With respect to - well, strike that.

Have you become aware of, or heard about, or had any discussion about possibly charging in the digital download market on a per subscription basis or on a subscription basis?

A. I believe I've seen discussion of that in the Napster documents. I don't recall discussion of pricing on a pay subscription basis with the in a digital download market in the following way: The downloader exchanges personal information to the Web site or other provider, and then the personal information is then sold for cash. Just as a concept, have you ever bumped into that anywhere?

A. Yes.

Q. So I'll call that revenue based upon exchange of personal information; is that fair enough?

A. Profiling would be a better word.

Q. Good. We will call that profiling. Did your discussions with the record labels identified on page 12 include discussions of possible profiling plans?

A. I don't remember specifically asking a question about that, although someone may have discussed it.

Q. As of the time you signed this Teece report, did you know what any of these labels' plans and intentions were with respect to profiling?

A. No; not as to details, no.

Q. When you say not as to details, did you know their plans and intentions at some higher level than detail?

A. I just have a recollection. I don't know whether I can put it to one of those phone conversations, but to something else. But there was discussion about profiling and sampling together and that you would use the two to provide information, to generate information, which you then may use to calibrate offers back to the individual consumer.

Q. In other words, you have some recollection of a discussion of the possibility of using profiling and sampling in combination?

A. I have some understanding of that. I don't know whether I got it from those conversations or whether I read it somewhere.

Q. To be clear, because we've used sampling in two different ways in this deposition, the sampling you just referred to involves downloading with a eye toward potential purchase?

A. Yes.

Q. Let's see if you can't remember the source whether it's for label or elsewhere - strike that.

As of the time you signed this report did you know the plans or intentions of any of the labels identified on page 12 with respect to the use of profiling and sampling in combination?

A. No.

and so forth are very much ancillary to access to the Plaintiffs content.

Q. Now, have you - do you have any opinion as to the impact on Plaintiffs if their artists began releasing music compliant with the SDMI format?

MR. GOLDSMITH: Objection.

THE WITNESS: I haven't studied that.

MR. STEELE: Q. Have you studied what impacts there would be, if any, to Napster if the Plaintiffs - strike that.

Have you studied what impact there would be on Napster if the artists whose work it released by the five labels you interviewed began to release their work compliant with the SDMI format?

MR. GOLDSMITH: Objection.

THE WITNESS: No.

MR. STEELE: Q. Do you have an opinion as to whether or not Napster has benefitted the Plaintiffs ability to move into the digital download market by familiarizing Internet users with the MP3 format?

A. Are you talking about net benefit, gross benefit?

Q. Just net benefit. On that factor alone, not weighting against other potential negatives?

A. I haven't studied that in any depth.

Q. Is it - is there any opinion or conclusion or observation on that point reflected in your report?

A. No.

Q. I want to ask the same question with respect to the Internet user base and familiarity with distribution of music over the Internet. Have you studied the benefits or lack thereof that Napster has made to the Plaintiffs by familiarizing the Internet user base with the notion of music distribution over the Internet?

A. Once again you're asking me to look at that as a standalone isolated factor separate from everything else that we've been discussing.

Q. Yeah. I don't want you to weigh it against other factors, just by itself?

A. I haven't studied that in depth.

Q. Hence the report would have no observations or opinions on that factor standing by itself?

A. Correct.

Q. I want to turn to your report to the aspect of

page 5, exit strategies. Do you see that?

covered this; it might be more stipulation. The documents relied upon by the expert in the preparation of the report have been produced to us, I take it?

MR. GOLDSMITH: Yes. It's our position that we have produced everything under the rules and/or the stipulation. There are some exceptions. You asked for some Shawn Fanning documents; we think you have them. That's actually the only exception that comes to mind is the set of Shawn Fanning documents. Again, it's our position that you have them and we haven't gone and made a copy of that which you gave to us, if you will.

MR. STEELE: Okay. I have no further questions at this time. I want to thank you for your patience and your candor and just endurance today.

THE WITNESS: Thank you.

(Whereupon, the deposition concluded at 6:10 p.m.)

A&M RECORDS, INC., a corporation, et al.,
Plaintiff, v. NAPSTER, INC., a corporation, and
does 1 through 100, Defendants.

2000 WL 34744095 (N.D.Cal.) (Partial Expert
Testimony)

END OF DOCUMENT