

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO, MAGISTRATE

SONY COMPUTER ENTERTAINMENT)
AMERICA LLC, a Delaware limited)
liability company,)
)
Plaintiff,)
)
vs.) NO. C 11-00167 SI (JCS)
)
GEORGE HOTZ; HECTOR MARTIN)
CANTERO; SVEN PETER; and DOES 1)
through 100,)
) San Francisco, California
Defendants.) Thursday
) March 10, 2011
) 11:00 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(Appearances continued on next page)

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1 APPEARANCES (CONT'D)

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1 **THE CLERK:** We are calling Case Number C. 11-00167,
2 Sony Computer Entertainment versus George Hotz.

3 And, counsel, please state your appearances.

4 **MR. GILLILAND:** Good morning, your Honor. For the
5 plaintiff, this is Jim Gilliland, together with
6 Mehrnaz Boroumand Smith, and Holly Gaudreau, for Plaintiff,
7 Sony Computer Entertainment.

8 **MR. KELLAR:** And good morning, your Honor. For
9 Defendant, George Hotz, this is Stewart Kellar, along with
10 Jack Praetzellis.

11 **THE COURT:** Okay. Well, thank you very much.

12 So the text of our meeting today is the two letters.
13 One is dated the 18th, having to do with discovery disputes;
14 and one is the 28th of February, having to do with impoundment.

15 I did sign the order authorizing the issuance of the
16 subpoenas that you both agreed that should be issued. And
17 we'll deal with the rest of the discovery disputes today.

18 I did want to emphasize two things about the
19 subpoenas that were issued; and also, to the extent I authorize
20 a PayPal subpoena, what my intent is with respect to those.
21 And my intent, number one, is that the information that's
22 produced pursuant to those subpoenas will be attorneys' eyes
23 only, under the protective order; and second, that it will be
24 without prejudice, obviously, to the subpoenaed parties or
25 anyone else who's got standings, prejudice -- without prejudice

1 to their right to file a motion to quash.

2 And what I would order you to do is make sure, when
3 you serve those subpoenas or any other subpoenas I authorize,
4 that you make sure you advise the subpoenaed parties that they
5 have the right to file a motion to quash.

6 On the discovery disputes, I thought we'd just go
7 down them, one by one.

8 The first is a PayPal subpoena. This is -- it seems
9 to me the relevancy of the PayPal information is limited to
10 whether or not the source of funds that are paid into the
11 PayPal account associated with the "geohot" g-mail address --
12 the location from which those funds are paid may be of some
13 relevance, but the documents, beyond that narrow scope, I don't
14 see particularly interesting, because we want to find out
15 whether or not it's being paid by California residents.

16 And so my thought was I would authorize a subpoena to
17 the PayPal account only to the extent that you could obtain
18 documents sufficient to identify the source of funds, including
19 location of the source of those funds deposited into a PayPal
20 account -- any PayPal account associated with the
21 geohot@gmail.com from January of 2009 to the present; but
22 otherwise, narrow it to that, but no further. That would be my
23 tentative ruling.

24 Anyone want to comment on that?

25 **MR. KELLAR:** Your Honor, this is Stewart Kellar, for

1 George Hotz.

2 With regard to the PayPal subpoena, first, the
3 subpoena does not limit discovery to locations within
4 California, which would be the only relevant portion to find
5 jurisdiction at this stage.

6 And, second, the legal -- George has subsequently set
7 up a legal-defense fund, at which he received donations through
8 PayPal after January 11th, after our February 10th meeting in
9 your office. And so those donations would be implicated in the
10 subpoena, and the privacy interests of those involved would be
11 implicated, and has no bearing on jurisdiction.

12 **THE COURT:** When was that set up? When did you start
13 receiving money?

14 **MR. KELLAR:** The exact date?

15 **THE COURT:** Approximately.

16 **MR. KELLAR:** Subsequent to our meeting February 10 or
17 so. I believe it might have been that following week. Let me
18 find out.

19 **THE COURT:** That doesn't matter.

20 What I would do -- the easy way around, to satisfy
21 your concern on that, I'll just say January 1, '09, to 2/1/11.
22 We'll cabin it. We'll put bookends on the dates. January 1,
23 '09, through February 1, 2011. And that will do yours.

24 Okay. Anything else you wanted to say, Mr. Kellar,
25 on that subject?

1 **MR. KELLAR:** Only that the subpoena seeks financial
2 information from those people who have no connection to
3 California. If we're looking for addresses of the subpoenaed
4 parties, those outside of California have no relevance to
5 jurisdictional discovery.

6 **THE COURT:** Okay. Could I hear from the plaintiff on
7 that subject?

8 **MS. SMITH:** This is Mehrnaz Boroumand Smith, on
9 behalf of SCEA.

10 The only concern I have with the proposal that you're
11 making is that PayPal may have difficulty providing us
12 information limited to -- in other words, it may be easier for
13 PayPal to give us all of the information, rather than the
14 information limited to the California residents.

15 **THE COURT:** Yeah. Well, easier is one issue. Easier
16 doesn't necessarily cut it. There are lots of things that are
17 easier, and it may or may not be easier. It may or may not be
18 impossible. It depends on -- it's a matter of degree. So I
19 don't know about easier; whether that would justify getting
20 information; but you agree that the question that is relevant
21 is -- is to identify whether or not, and how much, and how many
22 California residents paid into that account?

23 **MS. SMITH:** Yes, your Honor. We agree with that.

24 **THE COURT:** Okay. All right. Well, then, I'll limit
25 it, as requested. I will limit it to documents sufficient to

1 identify any source of funds in California that went into that
2 PayPal account -- any PayPal account associated with
3 geohot@g-mail.com for the period January 1, '09, to February 1,
4 '11. And ask the plaintiff to redraft their subpoena
5 accordingly. So that's the PayPal account.

6 Twitter -- is Twitter -- there's no issue with
7 Twitter anymore?

8 **MS. SMITH:** So the only outstanding issue with
9 Twitter, your Honor, is that Twitter requires a consent from
10 Mr. Hotz to release his Tweets. And we need to get that
11 consent from Mr. Hotz. Our understanding is that he will
12 provide it. And we're working on the paperwork that Twitter
13 needs; but we just wanted to confirm that that consent is going
14 to be provided to us.

15 **THE COURT:** Mr. Kellar.

16 **MR. KELLAR:** Your Honor, with regard to the consent,
17 we agree at our meet-and-confer in person that we would not
18 oppose that subpoena being sent, but as far as doing
19 affirmative acts to enable the subpoena, we didn't agree to
20 that.

21 **THE COURT:** Okay. Well, then, Mr. Hotz is ordered to
22 sign a consent to obtain his Twitter posts from January 1,
23 2009, to the present; his Tweets. I think it's -- he's already
24 not objected to the subpoena. I'll order him to provide that
25 consent.

1 Okay. Third is Mr. Hotz' deposition. Mr. Hotz is
2 ordered to appear for a deposition relating solely to the
3 question of personal jurisdiction.

4 The plaintiff shall pay reasonable expenses of
5 Mr. Hotz to be deposed in California.

6 Parties shall work out a date.

7 **MR. KELLAR:** Your Honor, this is Stewart Kellar, for
8 George Hotz.

9 With regard to a deposition, if George is ordered to
10 appear in California, he will be present in the forum, and
11 therefore, subject to being served with process while in the
12 forum.

13 **THE COURT:** Well, can we --

14 **MS. SMITH:** We agree, your Honor, not to serve him --

15 **THE COURT:** All right.

16 **MS. SMITH:** -- when he appears for his deposition.

17 **THE COURT:** Well, so am I -- it is stipulated between
18 the parties that appearance here in -- that he cannot be served
19 with process by the parties to this action when he appears at
20 his deposition in California? Is that correct?

21 **MS. SMITH:** That's correct, your Honor.

22 **THE COURT:** Okay.

23 **MR. KELLAR:** Your Honor, this is Stewart Kellar
24 again.

25 Can it also be stipulated that none of the interested

1 parties in this action that have been listed by Sony Computer
2 Entertainment America will serve Mr. Hotz' process, either?

3 **THE COURT:** Well, by "interested parties," what do
4 you mean?

5 **MR. KELLAR:** They were listed in -- along with the
6 initial complaint of -- I'm pulling it up right now,
7 your Honor.

8 **THE COURT:** You're talking about the statement of
9 interested parties filed for conflict purposes, or refusal
10 purposes?

11 **MR. KELLAR:** Correct.

12 **THE COURT:** Is there any objection to that addition?

13 **MS. SMITH:** No, your Honor. Good. Then that's the
14 stipulation.

15 **THE COURT:** Neither the plaintiff nor any interested
16 parties listed by plaintiff shall serve Mr. Hotz with process
17 when he comes to California.

18 I mean, I've got to tell you I don't think it makes
19 any difference, because they can serve him with process
20 wherever he is. Personal jurisdiction doesn't depend on where
21 he serves the process.

22 So -- but fine. Everyone's agreed to that. That's
23 great.

24 The next two issues -- the impound demand and the
25 impound -- and the -- in terms of inspection for discovery

1 purposes, and the impound sort of work together. And here are
2 my preliminary thoughts about that.

3 Number one is I'd like to know from the plaintiffs:
4 If we go along with your proposal with respect to what is
5 impoundment, leaving aside the -- any searching the devices for
6 discovery, which may or may not be permitted, but just the
7 impoundment procedure you have envisioned, and which -- with
8 the procedures identified by the expert in the second
9 declaration, the second certification, and making a couple of
10 extra copies, what's that cost?

11 **MS. SMITH:** Well, I think it was about 1,500,
12 your Honor, per image. And that -- we would be required to do
13 four images, under our proposal; plus the amount of time that
14 it would take the experts to do the analysis that they need to
15 do. And they did not give us an estimate, I don't think, on
16 the amount of time it would take them to do their analysis.

17 **THE COURT:** Okay. Well, you know, it's always a
18 balance. And so -- and right now, you're splitting the costs
19 of this, right?

20 But the defendant has, you know, raised certain
21 objections, which may or may not be well taken; but I think I
22 have to balance in that the price that would be required for
23 each of the steps that you want. So, you know, if the whole
24 thing costs \$6,000, then I don't care very much. You can split
25 that. And that is \$3,000 each. And that's not very much, in

1 the scheme of things; but the time is what is expensive with
2 this expert.

3 **MS. SMITH:** Well, your Honor, this is Mehrnaz again.

4 We can put a cap on the amount that's divided between
5 the two parties, and then anything additional, SCEA would pay
6 for, if that helps.

7 **THE COURT:** Okay. What would you propose?

8 **MS. SMITH:** We could say 3,500 would be the cap, and
9 then anything above that would be -- SCEA would pay for that.

10 **THE COURT:** So what you mean by that is the maximum
11 share that the defendant would have to pay is \$3,500?

12 **MS. SMITH:** That's correct, your Honor.

13 **THE COURT:** Okay. Do you have any comments on that,
14 Mr. Keller, leaving aside the question, for the moment, of
15 whether it's appropriate for other reasons or inappropriate for
16 other reasons to do the kinds of imagery and forensic analysis?

17 **MR. KELLAR:** This is Stewart Kellar again.

18 Putting aside the other issues at this point with
19 regard to splitting the costs, it raises a few issues with
20 regard to neutrality of the neutral. If they're getting paid
21 by one party to perform certain tasks, we're concerned that the
22 neutral may be inclined to perform tasks that are outside the
23 scope of the impoundment order, because plaintiff is happy to
24 pay for those extra tasks, which would then harm the neutrality
25 of the neutral.

1 **THE COURT:** Well, we can fix that, right? We'll just
2 order that they -- that the neutral can only do things that are
3 authorized by the Court. Right? That will fix that problem.
4 All right. So --

5 **MR. KELLAR:** This is Stewart Kellar again.
6 I agree with that.

7 **THE COURT:** Yeah. Okay. All right. So let's start
8 talking about impoundment. And the first order will be that
9 the neutral -- what's the name of the neutral, again?

10 **MS. SMITH:** "The Intelligence Group," or "TIG."

11 **THE COURT:** TIG shall only take steps with respect to
12 the items in their possession; items that have been impounded
13 that are authorized by Court order; that the first \$7,000 of
14 TIG costs will be split equally between plaintiff and
15 defendant, and any amount over \$7,000 would be paid for by the
16 plaintiff.

17 You see, I put off the hard question.

18 What do we do?

19 And so I guess, you know, my -- I guess the question
20 for you, Mr. Keller, is: I didn't really see how I could do
21 anything other than order the expert to do those things that it
22 thought were forensically necessary to examine, and comply with
23 the Court orders with respect to the files at issue.

24 You know, it has a protocol. The expert has a
25 protocol. And that is -- it's probably the first exhibit to

1 the letter, is the relevant protocol. Is that the -- that's
2 the one that has the -- isn't it the first certification, or
3 second?

4 I'm trying to --

5 **MR. KELLAR:** Yes, your Honor.

6 This is Stewart Kellar again.

7 With regard to the impoundment order, the original
8 impoundment order and the temporary restraining order had
9 ordered that the hard drive be impounded, irrespective of
10 whether or not any circumvention devices are removed from the
11 drives.

12 We saw that, initially, as overbroad.

13 However, when we came to an agreement during the
14 temporary restraining order hearing on February 10th, regarding
15 the scope of the impoundment order, neither party had any idea
16 the method in which that extraction would take place.

17 And now, after speaking with the neutral, we realize
18 that, in fact, the methods are more burdensome and invasive
19 than just having the drives impounded with a third-party
20 neutral.

21 **THE COURT:** No. I appreciate that; but the
22 third-party neutral says that in order to accomplish the
23 isolation of these particular files, it needs to do various
24 things. And the certification by Mr. Grenier, which is dated
25 February 27th, 2011, states various things he thinks he needs

1 to do. It's got, in paragraph five, the recommended
2 procedures, and goes on to elaborate a little bit in the next
3 paragraph. And that involves various technical procedures,
4 including making a working copy, or whatever you would call it.

5 And you don't want him to do that?

6 **MR. KELLAR:** No, your Honor, because, see, the
7 procedures of making a backup copy then goes outside of the --
8 the order of the Court or the -- the notion of an impoundment
9 order, which is to get the devices at issue out of the hands of
10 the plaintiff, and out of the hands of the general public.

11 In fact, Judge Illston made such a comment during the
12 hearing on February 10th, stating that the drives were to --
13 the circumvention devices were to be taken from Mr. Hotz, so he
14 did not have access to them, which is the sole reason for the
15 impoundment order.

16 Then when the impoundment order came out, the
17 language stated an overbroad term or a broad term; that the
18 things that are to be isolated, segregated, and removed are
19 information on those devices related to defendant's
20 circumvention, rather than circumvention devices, themselves.
21 Therefore, it has opened up a very problematic method of
22 finding these drives -- these circumvention devices -- and
23 information related thereto, which is a squishy term.

24 **THE COURT:** Well, I understand that, but here's my
25 problem. That's the order of the Court. You've lost that

1 argument. Judge Illston has issued that order. As far as I'm
2 concerned, that is the order of the court.

3 Now we have to figure out what to do with it. I'm
4 not in a position to say, "Oh, well, Judge Illston got it
5 wrong. let's not do that."

6 My task is to resolve disputes with regard to how her
7 order will be implemented, right? That's my task.

8 **MR. KELLAR:** Correct, your Honor.

9 **THE COURT:** Not whether.

10 And she's ordered that.

11 I've got someone saying, "This is how you do it."

12 And your response is, "We don't want them to do what
13 she asked."

14 I don't think I can go along with that.

15 I mean, I appreciate your concern.

16 You know, it should give you some comfort that
17 nothing's going to leave the hands of the neutral, without
18 Court order. I mean, she -- they're -- TIG, through the order
19 that I just stated, will only be allowed to take any steps that
20 are authorized by the Court -- by this court, with respect to
21 these devices. And I can tell you that would include releasing
22 anything to anyone that they have in their possession.

23 So your client can take some comfort in that, but
24 I've got to come up with a forensically sound way of doing what
25 the Court has ordered. And the only forensically sound way

1 that I've got in front of me is the one the neutral's proposed.

2 **MR. KELLAR:** Yes, your Honor.

3 This is Stewart Kellar again.

4 With regard to what the neutral has proposed, the
5 neutral has also noted in paragraph 8, page 4, of Mr. Grenier's
6 write-up, that the intelligence is only tasked with finding
7 specific data and copying that data, and then deleting it from
8 the original hard drive, and returning that drive to Mr. Hotz;
9 but Sony is seeking to create additional forensic images of
10 those drives for later, which is not a part of the impoundment
11 order.

12 **THE COURT:** Well, okay. Let's take --

13 **MS. SMITH:** This is Mehrnaz Boroumand Smith again.

14 **THE COURT:** No, no. I'm not ready to hear from you.

15 **MS. SMITH:** Sorry, your Honor.

16 **THE COURT:** I'm not ready to hear from you.

17 So I want to address the discovery question later,
18 second.

19 I want to do impoundment first.

20 As far as impoundment is concerned, my inclination is
21 to order that the TIG do what it says it needs to do in its
22 certification order that I previously cited with respect to its
23 functions.

24 And I haven't seen any objection that -- that
25 proposes a forensically sound way of doing what the Court has

1 ordered as an alternative.

2 Having no alternative, that would be the order of the
3 court.

4 Then I'd go on, and I would be happy to talk about
5 the question of whether or not there will be an extra copy;
6 whether or not they're going to be allowed to have discovery of
7 that extra copy, *et cetera*.

8 And my inclination on that is: Not just now; but
9 we'd talk about that.

10 So does anyone else want to be heard on the
11 impoundment; not on the discovery question? Anything further?

12 **MR. KELLAR:** Your Honor, this is Stewart Kellar
13 again.

14 With regard to impoundment, both parties have had
15 difficulty figuring out how to best articulate the finding of
16 information related to those devices. Even with the neutral,
17 it's been a difficult -- difficult to find out a protocol of
18 information related to the devices. So I'd like to try to
19 reach some sort of agreement on how we can determine what
20 "information related to" means.

21 **THE COURT:** Well, let's do this a step at a time.

22 Number one, I'm going to order that TIG perform the
23 tasks identified in its certification of -- they're different
24 dates, right? February 27th, 2011.

25 Now, in terms of -- you know, they have the Judge's

1 order. They can -- they can come up with their own proposal,
2 but I have no problem with you all trying to meet and confer
3 and decide what is -- how one understands what exactly is
4 information related to the circumvention devices. I don't have
5 any problem with that.

6 My guess is that the best person that's in the best
7 position to actually figure out what is a forensically sound
8 way of dealing with that question is the neutral; but I have no
9 problem with you also trying to reach an agreement. And if you
10 reach an agreement, and all submit it to me as an order, I'll
11 sign it. So why don't I order you to meet and confer on that
12 question?

13 **MR. KELLAR:** Will do.

14 **THE COURT:** Okay?

15 Now, on the question of discovery, you know, you're
16 going to get -- you're going to have a lot of discovery on --
17 we're talking about jurisdictional discovery. I -- I'm not
18 convinced that you aren't going to have sufficient
19 jurisdictional discovery without having to delve into these
20 particular devices, so I'm -- you're -- you're -- you need to
21 convince me. And I'm not convinced by your letter, that --
22 that there's something particular on there that you need to
23 search for or have someone else search for like a neutral.

24 And because you're doing a bunch of jurisdictional
25 discovery, I mean, you're going all over the place and

1 subpoenaing people, and, you know, from what I can tell,
2 causing quite a hullabaloo in the blogosphere; but it's -- my
3 question for you is: Well, what, in particular is on these
4 devices that you think you need, in addition to all of this
5 other stuff you're getting?

6 And the other question is: Why now?

7 So, for example, you could proceed with your
8 jurisdictional discovery. If it turns out that, from this --
9 this jurisdictional discovery, there is -- you learn things
10 that suggest, yes, we've got to get particular things off this
11 drive or drives, and then come back to me.

12 **MS. SMITH:** So, your Honor, the reason for why we're
13 seeking information off of these particular drives are twofold.

14 First, there's some information that may only be
15 stored or contained on these devices.

16 For instance, if Mr. Hotz used this device to connect
17 to the PlayStation network, the only place that we're going to
18 know that from is by doing an assessment or an inspection of
19 the device. We're not going to be able to get that from a
20 third party or --

21 **THE COURT:** What's that got to do with jurisdiction?

22 **MS. SMITH:** So if he -- if he accessed the
23 PlayStation network, he would have had to have had clicked
24 through the PSN agreement, which has a jurisdictional provision
25 in it.

1 **THE COURT:** Well, so, isn't -- won't there be other
2 evidence of -- of how this person accessed your server, if at
3 all?

4 **MS. SMITH:** There may be, but the most direct
5 evidence would be from his computer.

6 **MR. KELLAR:** Your Honor, this is Stewart Kellar.

7 **MS. SMITH:** Also, can I put in one other item, which
8 is: A lot of times people put in fake names to access the
9 PlayStation Network. So this -- being able to show that this
10 computer in one way, shape, or form accessed the -- the network
11 would show that Mr. Hotz did. And we wouldn't have to go
12 through the issues that come up with a fake names that people
13 put in.

14 **THE COURT:** So, but that -- that -- so what you're
15 seeking, actually, is just any record in this computer of the
16 computer being attached to a particular IP address?

17 **MS. SMITH:** Sure. That's right. We're just trying
18 to establish that that computer somehow hooked up to the PSN;
19 the PlayStation Network.

20 Additionally, we're looking for information, such as
21 any of the Sony Developer Kit tools that might be contained on
22 that computer. That information would only be distributed by
23 Sony Computer Entertainment America, and would establish
24 contacts between SCEA and Mr. Hotz.

25 **THE COURT:** Or between Mr. Hotz and somebody who had

1 them, and gave them to him?

2 **MS. SMITH:** That's correct; but at the end of the
3 day, he would have something belonging to SCEA that he should
4 have licensed.

5 **THE COURT:** Well, but you already say he's got
6 something belonging to you. This is not on the merits, right?
7 This is about general and specific jurisdiction.

8 **MS. SMITH:** Right. And one of his contentions is
9 that he's not aware of Sony Computer Entertainment America
10 being in California. And we believe that the SDK -- the
11 developer's kit -- would contain information showing him that
12 SCEA is in California.

13 **THE COURT:** Okay. Mr. Kellar, both of those things
14 seem relevant.

15 **MR. KELLAR:** Your Honor, this is Stewart Kellar
16 again.

17 With regard to inspecting the computers to find
18 things that might be relevant to jurisdiction, that isn't
19 enough. And, in fact, Mr. Hotz has already responded to
20 interrogatories stating affirmatively and outright that he has
21 never accessed the PlayStation Network.

22 **THE COURT:** Well, but I understand; but that's not
23 enough. That's not the question. You know, the question is
24 not whether he says so. The question is whether it's true.

25 And just because someone --

1 **MR. KELLAR:** With regard to accessing the PlayStation
2 Network, the PlayStation Network is, in fact, accessed through
3 PlayStation 3 system -- the console; the game console -- and
4 not external hard drives, which again shows that there is --
5 would be a reason to access the impounded hard drives, for
6 purposes of finding out if they connected to the PlayStation
7 Network.

8 **THE COURT:** Well, that's a technical matter I don't
9 know about. And counsel can respond to that, but my -- but
10 what about the second: Evidence to show that he knew that Sony
11 Computers Entertainment America was in California?

12 **MR. KELLAR:** Ah. Your Honor, with regard to that,
13 evidence to show that there are documents that say that Sony
14 Computer Entertainment America is located in California does
15 not evidence Mr. Hotz' knowledge that Sony is located in
16 California.

17 **THE COURT:** Well, that's an argument looking for a
18 little bit of a logical leap. I mean, I've got to tell you, it
19 is. I'm sorry. It would be admissible in evidence to show if
20 he, in fact, had a document on his computer showing that --
21 where the company was, he would be able to -- strong inference
22 that since it's on his computer, he must have put it on there
23 at some time. And the -- and it a reasonable inference that he
24 looks at documents that go on his computer. And so a jury
25 would be permitted to reach that conclusion, or a judge. It

1 may be right and it may be wrong. He may never have read them.
2 He may have downloaded a huge amount at the same time, et
3 cetera, et cetera. He can refute that, but it's certainly one
4 inference that's not unreasonable. So that doesn't -- that
5 doesn't persuade me at all.

6 As to the first issue, for the plaintiff's side, what
7 about this point that you don't connect; that you can't
8 connect -- I guess, is Mr. Kellar's point of view -- that you
9 can't connect a normal computer hard drive to the PlayStation
10 network?

11 **MS. SMITH:** My understanding, your Honor, is that you
12 can do that.

13 **THE COURT:** Excellent. And where do you get that
14 understanding?

15 **MS. SMITH:** I was told by Sony.

16 **THE COURT:** Oh.

17 **MS. SMITH:** I can go back and confirm, as well.

18 **THE COURT:** Well, Sony ought to know.

19 Well, here's my feeling on this. Both of those
20 issues seem to me to be relevant to jurisdiction. I don't
21 think that these things are immune from discovery, just because
22 they're in -- in the possession of a neutral.

23 I do think that there's a risk that conducting
24 discovery things on -- discovery searches on them will cause an
25 injury to evidence in the case, or to the drives that belong to

1 the defendant. And I want to avoid all of those things. So
2 what I will authorize for now is one thing. I'll authorize an
3 order, a second.

4 The authority is that the TIG shall make an
5 additional copy of both the encrypted and unencrypted versions
6 of the drive, and keep them in their possession.

7 And I'll order the parties to meet and confer and
8 come up with a proposed order authorizing TIG to search,
9 consistent with its forensic procedures, for documents showing,
10 one, whether the drive was connected to PSN; and, second, for
11 any -- what are the name? The developer -- what?

12 **MS. SMITH:** SDK -- the Sony Developers Kits.

13 **THE COURT:** Sony Developers Kits?

14 **MS. SMITH:** Sorry. Software Development Kits.

15 **THE COURT:** Software Development Kits, for
16 PlayStation, right?

17 **MS. SMITH:** Correct.

18 **THE COURT:** So you meet and confer on that, and come
19 up with a proposed order, because I'm going to authorize
20 discovery of those things from the devices -- copies of the
21 devices; but I don't want to do it -- but I want you all to
22 come up with the exact language on how that's going to be done,
23 but I just want you to know that that discovery will be
24 authorized.

25 So I think that covers all of the issues, unless I

1 missed some. Have I missed any?

2 **MS. SMITH:** So there's one other issue, your Honor,
3 with regard to the impoundment, and making sure that the
4 encrypted computers or devices are decrypted. That's going to
5 require that Mr. Hotz provide his decryption keys, or type them
6 in for TIG. And I wanted to make sure that that was included,
7 because he was refusing to do that, if any images were to be
8 made.

9 **THE COURT:** Okay. And I guess -- I guess Mr. Keller,
10 as consistent with my other rulings, I'd have to order that,
11 right?

12 **MR. KELLAR:** This is Stewart Kellar.

13 With regard to that, Mr. Hotz has not stated outright
14 that he will -- he will never enter the passwords.

15 And if, consistent with your rulings, you are saying
16 the drives have to be made accessible, then you're correct.

17 **THE COURT:** Okay. Well, so, ask him to do it
18 voluntarily. If he won't, I'll enter an order to that effect.

19 Now, so here's what I want to do. I've issued a
20 bunch of orders on the record here. I'd like a proposed form
21 of order reflecting all of those orders to be prepared by
22 counsel for plaintiff, and agreed to as to form by counsel for
23 defendant. And I guess we need to do that with some rapidity.

24 **MS. SMITH:** Your Honor, we'll do that.

25 **THE COURT:** Yes.

1 **MR. GILLILAND:** We'll get a copy of the a transcript,
2 so that everyone's clear about what we have to say.

3 **THE COURT:** Okay. So that is going to be a rushed
4 transcript. That will make my court reporter really happy.

5 She's shaking her head. You're missing all of the
6 important -- see? You miss all of the nuances when you're on
7 the phone.

8 **MR. GILLILAND:** Yeah.

9 **THE COURT:** All right. Well, so what I'd like you to
10 do is agree on a form of order, and submit it to me no later
11 than the close of business, Monday. So that will mean you'll
12 have to get to it and get going. Start drafting it even before
13 you get the transcript.

14 When you get the transcript, you can check it. Okay?

15 **MR. GILLILAND:** Thank you very much, your Honor.

16 **THE COURT:** Thank you.

17 **THE CLERK:** Counsel, if you'll stay.

18 **THE COURT:** Everybody stay on the phone.

19 **THE CLERK:** Stay on the phone. I'll give you Lydia's
20 phone number. Otherwise, court stands in recess.

21 **THE COURT:** Yeah. Stay on the phone.

22 (At 11:44 a.m. the proceedings were adjourned)

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24

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CERTIFICATE OF REPORTER

I, LYDIA ZINN, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C. 11-0167 SI (JCS), Sony Computer Entertainment America LLC v. George Hotz, et al., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/s/ Lydia Zinn, CSR 9223, RPR

Thursday, March 10, 2011

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