

# EXHIBIT 16

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT

---000---

SOMTAI TROY CHAROENSAK, and  
MARIANA ROSEN, individually,  
and on behalf of all others  
similarly situated,

Plaintiff,

vs.

No. C0500037 JW

APPLE COMPUTER, INC.,

Defendants.

\_\_\_\_\_ /

DEPOSITION OF SOMTAI TROY CHAROENSAK

Taken before EARLY K. LANGLEY, RMR

CSR No. 3537

January 12, 2007

1 DEPOSITION OF SOMTAI TROY CHAROENSAK  
2

3 BE IT REMEMBERED, that pursuant to Notice, and on  
4 the 12th day of January 2007, commencing at the hour of  
5 9:07 a.m., in the offices of Jones Day, 555 California  
6 Street, 26th Floor, San Francisco, California, before  
7 me, EARLY K. LANGLEY, a Certified Shorthand Reporter,  
8 personally appeared SOMTAI TROY CHAROENSAK, produced as  
9 a witness in said action, and being by me first duly  
10 sworn, was thereupon examined as a witness in said  
11 cause.

12  
13 ---o0o---

14  
15 ROY A. KATRIEL, The Katriel Law Firm, 1101 30th  
16 Street NW, Suite 500, Washington, D.C. 20007, appeared  
17 on behalf of the Plaintiff.

18  
19 MICHAEL M. GOLDBERG, Glancy, Binkow & Goldberg,  
20 LLP, 1801 Avenue of the Stars, Suite 311, Los Angeles,  
21 California 90067, appeared on behalf of the Plaintiff.  
22  
23  
24  
25

1           ROBERT A. MITTELSTAEDT, TRACY STRONG, Jones  
2           Day, 555 California Street, 26th Floor, San Francisco,  
3           California, appeared on behalf of the Defendant Apple  
4           Computer.

5  
6           ALSO PRESENT: Nick Silva, Tele-Video  
7           Production Services, Oakland, California.

1 Case No. C0500037 JW, filed in the United  
2 States District Court, Northern District of  
3 California.

4 This deposition was noticed by Robert  
5 Mittelstaedt for the defendant.

6 Would the counsel for the parties please  
7 identify themselves and for whom they're  
8 appearing.

9 MR. KATRIEL: Good morning. Roy Katriel  
10 from the Katriel Law Firm in Washington, D.C. on  
11 behalf of the defendant.

12 MR. GOLDBERG: Michael Goldberg, Glancy,  
13 Binkow & Goldberg, on behalf of the plaintiff.

14 MS. STRONG: Tracy Strong, Jones Day, on  
15 behalf of the defendant.

16 MR. MITTELSTAEDT: Bob Mittelstaedt, Jones  
17 Day, defendant.

18 THE VIDEOGRAPHER: Would the counsel  
19 please state any stipulations or statements that  
20 they would like on the record at this time?

21 MR. MITTELSTAEDT: None.

22 THE VIDEOGRAPHER: The court reporter may  
23 now swear in the witness.

24 SOMTAI TROY CHAROENSAK,  
25 sworn as a witness,

1 testified as follows:

2 EXAMINATION BY MR. MITTELSTAEDT:

3 Q. Would you state your full name and  
4 address, please?

5 A. My name is Sontai Troy Charoensak. And my  
6 address is 2636-24th Avenue San Francisco,  
7 California 94116.

8 Q. And would you do me a favor and just  
9 pronounce your last name slowly one more time?

10 A. It's pronounced Charoensak.

11 Q. Charoensak?

12 A. So phonetically I guess it's J-u-l-u-n and  
13 then "sack."

14 Q.

15 A.

16 Q.

**REDACTED**

17 A.

18 Q.

19 A.

20 Q. Have you ever had your deposition taken  
21 before?

22 A. No.

23 Q. Let's take a couple of minutes and talk  
24 about the procedure to make sure you're  
25 comfortable with it.

1 time, my -- my computer doesn't have a lot of --  
2 didn't have a lot of storage capacity, so I would  
3 delete the music, thinking that I had it on my  
4 iPOD, and that, because I purchased it, it is mine  
5 and I could, you know, later use it, but I soon  
6 realized that that is not the case.

7 Q. So, initially, you got the music into your  
8 iTunes library, put it onto your iPOD, and then  
9 deleted it from the iTunes library on your  
10 computer?

11 A. Correct.

12 Q. And then when you wanted to burn a CD with  
13 that music that you had deleted, you encountered  
14 problems, is that what you are saying?

15 A. Correct.

16 Q. And then at some point, did you stop  
17 deleting the music from the iTunes library on your  
18 computer?

19 A. Yes, I did.

20 Q. And once you stopped deleting that music,  
21 then were you able to burn CDs?

22 A. Only on that computer, yes.

23 Q. So the problem that you encountered was  
24 that you were deleting music from the iTunes  
25 library and that made it impossible, as you

1 understood it at least, to burn CDs with that  
2 music that had been deleted; right?

3 A. Correct.

4 Q. And that's the problem you were  
5 complaining to Ms. Wong about?

6 A. Not -- not exactly.

7 Q. Okay. What problem were you complaining  
8 to Ms. Wong about then?

9 A. That I was -- I was locked out of the  
10 music that I purchased. I think that's the main  
11 complaint, that I realized that the music on my  
12 iPOD, although that I paid for it and it was mine,  
13 I had no access to it. That was the main  
14 complaint that I had. The fact that I couldn't  
15 burn a CD was just a result of that, that I was  
16 locked out of my own music that I purchased.

17 Q. Well, you weren't locked out of it as you  
18 used that term, as long as you kept the music in  
19 your iTunes library on your computer; correct?

20 A. I -- I was locked out of it because I had  
21 only one choice of being able to use that music.  
22 It was either on my iPOD or in the iTunes that I  
23 initially purchased the iTunes on the computer  
24 that I used to purchase the music, and then any  
25 other time I would try to have access to that file



1 I would not be able to have access to it.

2 Q. Okay. When you -- when you keep the music  
3 from Apple Store in the iTunes library, you  
4 continue to have access to it; correct?

5 A. Just on the computer that I purchase, and  
6 using the iTunes, yes.

7 Q. And you know you can also burn a copy of  
8 that music as long as you have not deleted it from  
9 your iTunes library; correct?

10 A. I know that, yes, yes.

11 Q. When did you learn that?

12 A. After -- well, after I deleted the file,  
13 once or twice, I figured it out that I would have  
14 to burn it on the computer that I purchased it,  
15 and then I would be able to delete it because then  
16 I had a -- a, I guess a backup or I would have the  
17 CD.

18 Q. And have you done that now already, burned  
19 copies of music that you downloaded from Apple?

20 A. Yes.

21 Q. How many times have you done that?

22 A. I don't know the exact number.

23 Q. More than -- more than ten times?

24 A. I would say at least more than eight  
25 times.

1 purchased that in late 2004.

2 Q. Do you remember the month?

3 A. I believe it's December but I'm not  
4 totally sure on the exact month.

5 Q. And at that time, had you bought the new  
6 G4 or the PowerBook yet?

7 A. Oh, G4. I don't believe so.

8 Q. So, as far as you can recall, the computer  
9 you were using when you bought the iPod was the  
10 Dell laptop or the first G4, is that correct?

11 A. Yes.

12 Q. Where did you buy the iPod?

13 A. The iPod I purchased in Stonestown at an  
14 Apple Store.

15 Q. And what model did you get?

16 A. I -- I don't know the exact model but it's  
17 the 20 gigabyte.

18 Q. How much did you pay for it?

19 A. I paid less -- a little less than \$300. I  
20 had a student discount.

21 Q. How much was the student discount worth?

22 A. I believe 10 percent, but I'm not sure on  
23 the exact amount.

24 Q. How did you decide to buy an iPod?

25 A. I decided to buy an iPod -- well, first I

1 was looking at all the MP3 players that were  
2 available, and at that time, the two that I was  
3 looking at was the iPOD and the, I believe it is  
4 the Rio, the Rio.

5 And at that time one of my co-workers had  
6 a Rio that she used to go to the gym with and it  
7 was a lot less than the iPOD, but the ability to  
8 use iTunes -- she couldn't use iTunes with that,  
9 and also, she didn't -- she couldn't -- I believe  
10 at the time she couldn't -- she had problems  
11 storing data files which was one of the reasons  
12 that I wanted to buy an iPOD also because I needed  
13 to store huge movie files from school, so I needed  
14 something I could also use as an external hard  
15 drive.

16 And so I decided to pay an extra for an  
17 iPOD because I would have access to iTunes and I  
18 would be able to use it as an external hard drive.  
19 And also a big thing was that the Rio, I remember  
20 I couldn't -- I didn't -- it wasn't Mac  
21 compatible, I believe, and so I just decided to  
22 spend the extra money and get an iPOD that I could  
23 use, you know, for school. That was one of the  
24 big reasons.

25 And at the time, the whole thing that

1 forced me to go that direction was I was using a  
2 disk player and it had gotten stolen at the gym,  
3 so I had no -- nothing. So I figured that I was  
4 going to spend \$100 for a new disk player, I might  
5 as well invest in an MP3 player. And that's when  
6 I started looking for an MP3 player.

7 And also, at the time, at school, I was  
8 having to burn huge amount of data onto CDs, so it  
9 was taking a lot of time, so I needed something I  
10 could use as an external hard drive.

11 Q. Any other reason that you bought an iPOD?

12 A. Yeah. I think those were the three  
13 deciding factors.

14 Q. Okay. At the time you were using a CD  
15 player?

16 A. Right.

17 Q. That's what you were referring to by the  
18 disk player?

19 A. Yes.

20 Q. And, so you were going to replace that and  
21 your decision was do you buy another CD player or  
22 do you buy an MP3 player?

23 A. Yeah. At that time, it was about \$100 for  
24 another disk player, and at that time, my  
25 co-worker had an MP3 player, and she was like why

1 Q. The difference was more than \$100?

2 A. The difference was more than \$100, yes.

3 Q. Did your friend or your co-worker,  
4 Ms. Hill, tell you she was satisfied with her Rio?

5 A. No, she was -- she -- she didn't -- she  
6 had some kind of problem with it. I forgot  
7 exactly what it was, but she -- no, she didn't  
8 really like the Rio she had.

9 Q. Was that another factor that led you to  
10 buy an iPOD?

11 A. Yes, it was.

12 Q. Now, when you bought the iPOD, how did you  
13 intend to use it?

14 A. I intended to use it to listen to my  
15 music. I wanted to transfer the CDs that I own on  
16 to the MP3 player so that I could have access to  
17 it, you know, on the train, or in the gym. And I  
18 also intended to use it as an external hard drive.

19 Q. And what music did you have at the time?

20 A. Just CDs.

21 Q. And were you able to use the iPOD in the  
22 way that you had envisioned?

23 A. Yeah. Uh-huh.

24 Q. Okay. When you went to Stonestown to buy  
25 the Apple iPOD, did you -- do you remember talking

1 Q. And how did you go about putting your CD  
2 collection onto your iPOD?

3 A. I just, you know, insert the CD and then  
4 import through iTunes.

5 Q. And so you would get the music into your  
6 iTunes library?

7 A. Correct.

8 Q. On your computer; right?

9 A. Right.

10 Q. And then how would you get it from there  
11 to your iPOD?

12 A. Just drag and drop.

13 Q. When you say you were transferring, in  
14 effect, your CD collection, where did you get the  
15 CDs? Were they all CDs that you had purchased?

16 A. Yes.

17 Q. Were there any CDs that you had burned  
18 yourself?

19 A. Yes, I believe so.

20 Q. And can you estimate for me what, about  
21 how many CDs you put onto your computer and then  
22 onto your iPOD?

23 A. I would say approximately 75 percent of  
24 the music that I have on my iPOD currently is from  
25 my CD collection.

1 As of the time you bought the iPOD, do you think  
2 you had any music that was actually stored in any  
3 of your computers, you know, whether in the iTunes  
4 library, or in these other Windows applications?

5 A. I don't believe so. You mean like in, I  
6 guess, in Windows it has that My Music Folder?

7 Q. Right.

8 A. Yeah. I don't believe I had any music  
9 stored in those. If I -- if I recall correctly, I  
10 think that there is some kind of sample music that  
11 comes automatically downloaded, but I've never --  
12 I don't recall personally putting music into that  
13 prior to having iTunes.

14 Q. And that's because up to that point, you  
15 had used the computer just to play the music from  
16 your CD collection rather than to store it; is  
17 that right?

18 A. Correct. Yes.

19 Q. And is it also correct that at the time  
20 you bought the iPOD, you had not bought any music  
21 from Apple's online store, is that correct?

22 A. Yes.

23 Q. You first bought music from Apple's online  
24 store after you bought the iPOD; correct?

25 A. Yes.

1 STATE OF CALIFORNIA )

2 )

3 COUNTY OF ALAMEDA )

4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That SOMTAI TROY CHAROENSAK, in the foregoing  
7 deposition named, was present and by me sworn as a  
8 witness in the above-entitled action at the time  
9 and place therein specified;

10 That said deposition was taken before me at  
11 said time and place, and was taken down in  
12 shorthand by me, a Certified Shorthand Reporter of  
13 the State of California, and was thereafter  
14 transcribed into typewriting, and that the  
15 foregoing transcript constitutes a full, true and  
16 correct report of said deposition and of the  
17 proceedings that took place;

18 IN WITNESS WHEREOF, I have hereunder  
19 subscribed my hand this 14th day of January 2007.

20


21

22

23

24

25

  
EARLY K. LANGLEY, CSR No. 3537  
State of California



# EXHIBIT 17

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOMTAI TROY CHAROENAK AND MARIANNA	)	
ROSEN, etc.,	)	
	)	Plaintiffs,
	)	
vs.	)	Civil Action C-05-00037
	)	
	)	
APPLE COMPUTER, INC.,	)	
	)	
	)	Defendant.
	)	

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DEPOSITION OF MARIANNA ROSEN

January 24, 2007

236593



(310) 207.8000 Los Angeles	(916) 922.5777 Sacramento	(818) 702.0202 San Fernando Valley
(949) 955.0400 Orange County	(408) 885.0550 San Jose	(858) 455.5444 San Diego
(415) 433.5777 San Francisco	(951) 686.0606 Inland Empire	(760) 322.2240 Palm Springs

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A P P E A R A N C E S :

THE KATRIEL LAW FIRM  
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BY: ROBERT A. MITTELSTAEDT, ESQ.

A L S O P R E S E N T :

THOMAS DELVECCHIO, Videographer

10:15:37  
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10:16:49

1 THE VIDEOGRAPHER: This is tape  
2 number one of the videotaped deposition of  
3 Marianna Rosen taken by Defendant in the  
4 matter of Somtai Troy Charoenak, et al.,  
5 Plaintiffs versus Apple Computer, Inc.,  
6 Defendant, in the United States District  
7 Court for the Northern District of  
8 California, Civil Action No. C-05-00037.

9 This deposition is being held at the  
10 office of Jones Day, 222 East 41st Street,  
11 New York, New York. Today is Wednesday,  
12 January 24th, 2007. The time is 10:17 a.m.

13 My name is Thomas Delvecchio from  
14 the firm of Barclay Court Reporters. I am  
15 the legal video specialist.

16 The court reporter is Josephine  
17 Fassett in association with Barclay Court  
18 Reporters.

19 For the record will counsel please  
20 introduce themselves?

21 MR. MITTELSTAEDT: Bob Mittelstaedt  
22 for Apple.

23 MR. KATRIEL: Good morning. Roy  
24 Katriel from The Katriel Law Firm for the  
25 Plaintiffs.

10:16:49

1

THE VIDEOGRAPHER: Thank you.

10:16:51

2

Now will the court reporter please

10:16:51

3

swear the witness?

10:16:59

4

M A R I A N N A R O S E N, the witness, having

10:16:59

5

been duly sworn, was examined and testified

10:16:59

6

under oath as follows:

10:17:00

7

EXAMINATION BY

10:17:01

8

MR. MITTELSTAEDT:

10:17:02

9

Q Good morning.

10:17:03

10

A Good morning.

10:17:03

11

Q If you would state your full name

10:17:05

12

and address for the record, please.

10:17:07

13

A Marianna Rosen, 236 Tillou Road,

10:17:08

14

South Orange, New Jersey, the Zip Code is 07079.

10:17:14

15

Q And you're aware you're under oath

10:17:16

16

today, correct?

10:17:17

17

A I am aware.

10:17:19

18

Q Have you given testimony before

10:17:19

19

either in court or by way of deposition?

10:17:22

20

A I don't think so. I mean, when I

10:17:24

21

became an American Citizen I guess that was sort

10:17:27

22

of a similar process. I had to do an oath. I

10:17:30

23

don't think I ever -- no, I was robbed four years

10:17:35

24

ago on the corner, or three years ago on the

10:17:38

25

corner of my street and of course I gave the

10:41:43 1 vinyl records?

10:41:43 2 Q The vinyl.

10:41:43 3 MR. KATRIEL: You're talking about

10:41:44 4 records?

10:41:45 5 MR. MITTELSTAEDT: Yeah, records.

10:41:45 6 A I know. Unfortunately I don't think

10:41:48 7 I do.

10:41:52 8 Q How many CD's do you have that you

10:41:54 9 have burned?

10:42:00 10 A Maybe 10.

10:42:06 11 Q And those are CD's you burned from

10:42:09 12 music you bought from Apple?

10:42:11 13 A No. As I said, this could be

10:42:14 14 combination. If I use the iTunes software, I load

10:42:18 15 a physical CD that I bought in a store or somebody

10:42:23 16 gave to me, I choose some songs from there. It

10:42:26 17 may be a mixture, I may have some songs that are

10:42:28 18 from a physical CD that I loaded, it may be some

10:42:31 19 songs I bought from Apple, it may be a combination

10:42:33 20 of two CD's that I bought.

10:42:36 21 Q And then you make a play list and

10:42:37 22 then you burn the play list?

10:42:39 23 A Right, exactly.

10:42:39 24 Q And then when you burn a CD in that

10:42:43 25 fashion, how do you use the CD?

10:42:48 1 A To play it in a car most of the time  
10:42:50 2 because I cannot listen to the iPod say in the  
10:42:53 3 car.

10:42:57 4 Q And have you ever copied that CD  
10:43:00 5 back onto your computer?

10:43:03 6 A The CD that I already burned?

10:43:05 7 Q Yes.

10:43:06 8 A No. Why would I do that?

10:43:13 9 Q Do you -- let's walk through the  
10:43:15 10 process that you use to make -- first of all,  
10:43:20 11 let's walk through the process you used to copy a  
10:43:24 12 CD into your Dell computer.

10:43:26 13 A Uh-hum.

10:43:26 14 Q Could you just walk through how you  
10:43:28 15 do that?

10:43:29 16 A Well, I take a CD and install it  
10:43:32 17 into the drive, the iTunes open up, and I usually  
10:43:39 18 would create a play list and copy the songs that  
10:43:45 19 appear in the window. I might do it in some  
10:43:47 20 backward fashion. Copy the songs that appear in  
10:43:50 21 the window that I like, or sometimes it's the  
10:43:53 22 whole CD, into the play list and it will  
10:43:55 23 automatically be saved into the general iTunes  
10:43:59 24 library as well.

10:44:00 25 Q Do you pay any attention to the

10:44:04  
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10:45:23

1 format that's being used to copy the music, copy  
2 the CD into iTunes?

3 A You know, I did actually recently  
4 because when I realized that I cannot load any  
5 other music away from iTunes. In other words, I  
6 don't know exactly what the format name but I  
7 realized that if I go to any other Web site that  
8 legally sells music, I cannot download, buy and  
9 download this music into My iTunes. In other  
10 words --

11 Q Go ahead.

12 A -- the two ways that I can actually  
13 get my music into the software is, A, to purchase  
14 it from Apple, or B, to copy it from existing CD,  
15 you know, hard CD.

16 Q You say that you recently realized  
17 you can't load music from --

18 A Well, recently may be a year ago.  
19 To answer this year question. I do aware that  
20 there is a certain format exist in which music can  
21 be saved, and this is different, and Apple uses  
22 one format, the other companies -- I mean the  
23 other music could come in a different format.  
24 That's to answer your question.

25 Q But when you said that you realized



11:00:19 1 A Well, I wanted to work out with  
11:00:21 2 something that would not skip as a CD player and I  
11:00:30 3 just think -- I don't remember why I choose iPod  
11:00:34 4 over it, maybe the advertising was all over in my  
11:00:38 5 face, I don't remember.

11:00:40 6 Q Have you heard people say that the  
11:00:42 7 iPod's cool?

11:00:43 8 A You know, I don't really socialize  
11:00:45 9 with very young people fortunately or  
11:00:48 10 unfortunately who would refer iPod to me.

11:00:51 11 Q Okay. But have you heard the iPod  
11:00:53 12 referred to as the cool factor?

11:00:55 13 A Well, that's not why I bought it.  
11:00:58 14 Maybe I heard.

11:01:00 15 Q But did you shop around and compare  
11:01:02 16 the iPod with others?

11:01:04 17 A No. You know what happened, it's  
11:01:07 18 there in Short Hills Mall and I walked -- and I  
11:01:10 19 heard about iPod, because they have very good  
11:01:13 20 advertising, and I happened to like Macintosh a  
11:01:15 21 lot, and I don't think I ever owned one, but I  
11:01:18 22 really loved the way it looked, so I just went and  
11:01:21 23 bought it.

11:01:22 24 Q Did you like the way the iPod  
11:01:24 25 looked?

11:01:24 1 A Yes.

11:01:25 2 Q I mean, did you try it out at the

11:01:27 3 store before you bought it?

11:01:28 4 A No, I just went and bought it.

11:01:30 5 Q What did you like about its looks?

11:01:34 6 A Well, I mean, I like it's kind of

11:01:34 7 slim and, you know, it looks nice.

11:01:36 8 Q Did you feel like anything or

11:01:38 9 anybody forced you to buy the iPod?

11:01:44 10 A The first iPod for sure, no.

11:01:47 11 Q And you could have bought any other

11:01:50 12 mp3 player at the time if you had wanted to,

11:01:52 13 right?

11:01:54 14 A I guess. There was no force. The

11:01:56 15 first, no.

11:01:57 16 Q When you were at the Apple store,

11:01:59 17 did you talk, the first time when you bought your

11:02:02 18 first iPod, did you talk with anybody at Apple

11:02:04 19 about the iPod or about your decision-making

11:02:07 20 process?

11:02:08 21 A I don't remember. Well, you know, I

11:02:11 22 might have discussed how to use it which -- I mean

11:02:14 23 maybe we talked about the megabytes, gigabytes or

11:02:19 24 whatever, the memory size that is, and which one

11:02:24 25 makes more sense for me.

11:18:08 1 Q Okay. Do you know -- well, let me  
11:18:11 2 just ask you this: Did anybody force you to buy  
11:18:14 3 that for her?

11:18:15 4 A She. She forced me to buy that for  
11:18:18 5 her. She said she wants an iPod. I said what do  
11:18:24 6 you want for your birthday? I said cool, I will  
11:18:26 7 get you an iPod Mini.

11:18:29 8 Q Did she tell you why she wanted an  
11:18:31 9 iPod?

11:18:32 10 A She said she wants to work out, she  
11:18:34 11 needs to lose weight. That was as far as we went.

11:18:35 12 Q But did she tell you why an iPod  
11:18:37 13 rather than another mp3 player?

11:18:40 14 A I don't think we had that  
11:18:42 15 conversation at all.

11:18:43 16 Q Were you aware at that time that  
11:18:43 17 there were other mp3 players that could be used  
11:18:47 18 for working out and playing digital music?

11:18:50 19 A Maybe.

11:18:51 20 Q What do you mean "maybe"?

11:18:53 21 A Probably I was aware, I don't  
11:18:54 22 remember. I'm aware -- I'm aware of it now for  
11:18:58 23 sure and I know I probably knew about it, because  
11:19:01 24 I think I met a guy in a gym who was using  
11:19:05 25 something else, so I knew that.

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1 bought any new device other than iPod, I would  
2 assume it either will have to come with some  
3 software or I can use the existing computer  
4 software which came like Windows Media Player or  
5 something like that, and I would go to other Web  
6 sites that are out there and buy music from them  
7 and burn my CD's, load them into computer, and  
8 then transfer them into my mp3 player, but I never  
9 looked into that closely, so I really don't know.

10 Q Okay. Do you have any understanding  
11 as to whether if you bought a competing mp3 player  
12 you could use all of the music in your iTunes  
13 library just by having another library, either  
14 Windows Media or some other library on your  
15 computer?

16 A You mean, let me rephrase the  
17 question. You mean, could I transfer the music  
18 from iTunes library into an XYZ library and copy  
19 it into the new mp3 player?

20 Q Correct.

21 A And the question is?

22 Q Is it your understanding that you  
23 can do that?

24 A My understanding is that I cannot do  
25 that.

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11:51:04  
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11:51:07  
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1 Q Even with your CD collection that  
2 you burned onto your computer or copied onto your  
3 computer?

4 A I don't know if the CD is because  
5 actually now that you started me thinking the CD  
6 maybe I would be able to copy, but I don't think  
7 so. I think that anything that is on an iTunes  
8 library I can only use with iPod. iTunes, iPod,  
9 clear I cannot use.

10 Q And so your belief is that if you  
11 got a competing mp3 player you'd have to start all  
12 over and copy your CD's from the physical CD into  
13 a different library, get music from other music  
14 stores, put it into the different library; is that  
15 correct?

16 A Right.

17 Q Now that we've talked about this  
18 some more, can you tell me where you got that  
19 idea?

20 A I'm thinking. I'm trying to. I  
21 mean, I don't remember if somebody told me that in  
22 a store, it's possible, or it could be that I'm  
23 just understanding it because Apple names their  
24 products in such way that I just start thinking  
25 that this is, you know, Apple products and you

12:07:10 1 on iPod.

12:07:12 2 Q Does your son watch cartoons on the  
12:07:14 3 iPod?

12:07:14 4 A He is not allowed, but he does.  
12:07:17 5 They're there, I mean, I don't even know how to  
12:07:20 6 delete them. So like, for example, I loaded, I  
12:07:25 7 wanted to know what this thing, all this noise  
12:07:28 8 about this group Strokes, this New York City group  
12:07:31 9 Strokes and I bought a video, you know, how do you  
12:07:37 10 say it, video clip from iTunes for that music, and  
12:07:40 11 it's a little explicit, but somehow it's in my  
12:07:45 12 iPod. I mean not somehow, I know that it should  
12:07:48 13 be in my iPod, I synched it, and my son saw it, so  
12:07:53 14 I'm not nuts about him watching it.

12:07:54 15 Q Okay. So he does watch videos on  
12:07:56 16 your iPod?

12:07:58 17 A Sometimes.

12:08:09 18 Q When you bought the newest iPod, did  
12:08:12 19 you think to yourself that you were paying too  
12:08:16 20 much for it?

12:08:20 21 A Surely of course, I thought it was  
12:08:21 22 expensive, I think all iPods are very expensive.

12:08:25 23 Q When you bought the first iPod, did  
12:08:26 24 you think it was expensive?

12:08:28 25 A I thought it was expensive.

01:34:31 1 Q Has your husband done anything other  
01:34:33 2 than talk to you in an effort to get other people  
01:34:36 3 to join?  
01:34:36 4 A No.  
01:34:47 5 Q When you bought your iPod, did  
01:34:50 6 anyone at Apple tell you you couldn't buy an iPod  
01:34:54 7 unless you also agreed to buy music from Apple's  
01:34:57 8 online music store?  
01:35:00 9 A I don't remember. Which iPod you  
01:35:03 10 referring to? Both?  
01:35:05 11 Q Any of the three.  
01:35:07 12 A I don't think so, no.  
01:35:13 13 Q Can you use your iPod without ever  
01:35:16 14 buying any music from Apple?  
01:35:21 15 A In other words, can I use my iPod  
01:35:24 16 with only the CD's that I loaded?  
01:35:27 17 Q Let's start there. You can use your  
01:35:29 18 iPod with CD's that you load without ever buying  
01:35:32 19 any music from Apple, correct?  
01:35:34 20 A Well, nobody forces me to give them  
01:35:37 21 a credit card and buy music, that's clear, but why  
01:35:41 22 would I not?  
01:35:42 23 Q Well, could you just answer the  
01:35:45 24 question? You can use an iPod to play music from  
01:35:49 25 your music collection, from your CD collection,

01:58:36 1 Q When he buys music from iTunes Music  
01:58:39 2 Store, what does he do with it, if you know?  
01:58:42 3 A Oh, just I think once he loaded some  
01:58:47 4 music and we made a little CD with it to go, when  
01:58:50 5 we were traveling and went to Miami and wanted to  
01:58:54 6 listen in the car. And sometimes he just buys the  
01:58:57 7 music for our son that he thinks our son would  
01:59:01 8 like.

01:59:02 9 Q Okay.

01:59:02 10 A And then whatever our son does with  
01:59:04 11 that, which is listen to it.

01:59:07 12 Q Looking at this first set of pages  
01:59:08 13 16 to 17, can you tell us or approximate how many  
01:59:11 14 of these songs you or your husband has burned to a  
01:59:16 15 CD?

01:59:17 16 A I think if I had to hum and all that  
01:59:27 17 line?

01:59:29 18 Q Yes.

01:59:31 19 A Is something that we made a CD with,  
01:59:43 20 you know, burning copy on a CD.

01:59:57 21 And Here It Is, By the River Dark,  
02:00:00 22 Alexandra Leaving, You Have Loved Enough, I think  
02:00:04 23 that's also. I think it was just one CD that he  
02:00:06 24 made.

02:00:12 25 Q And do you have at home all the CD's



02:39:57 1 A No, I did not tell him that.

02:39:59 2 Q Was there any similar model that

02:40:02 3 didn't have video?

02:40:04 4 A I don't remember. I think they all

02:40:05 5 had videos in the big ones. In other words, in

02:40:08 6 the big ones meaning the full-blown iPod as

02:40:11 7 opposed to Mini.

02:40:13 8 Q Okay. And if there had been a

02:40:14 9 full-blown iPod, to use your description, without

02:40:18 10 the video, that's what you wanted to purchase,

02:40:20 11 right?

02:40:21 12 A I could have purchased that. I

02:40:22 13 could have purchased the one that's video. It's

02:40:25 14 just a nice edition, it didn't hurt to have the

02:40:28 15 video. It's not like I was objecting to that.

02:40:30 16 Q Because, in fact, your son has used

02:40:33 17 the video to watch cartoons, right?

02:40:34 18 A Yeah, but I'm actually against that.

02:40:37 19 Q And another reason that you bought

02:40:40 20 the iPod was you didn't think you could transfer

02:40:45 21 your CD collection to a competing mp3 player

02:40:51 22 without starting over and copying these physical

02:40:55 23 CD's into a new library, correct?

02:40:57 24 A Let me rephrase it a little bit. I

02:41:00 25 wouldn't say another reason. The only reason, I

02:41:03 1 mean the main reason I bought iTunes -- I'm  
02:41:06 2 sorry -- iPod is because I wanted to use my iTunes  
02:41:09 3 because I knew I could only, I knew, I thought,  
02:41:13 4 that I can only use my iTunes library on an iPod.

02:41:17 5 Q And that's something you had thought  
02:41:20 6 from the first time you used an iPod, right?

02:41:23 7 A More or less again.

02:41:25 8 MR. MITTELSTAEDT: Okay.

02:41:26 9 MR. KATRIEL: I have nothing  
02:41:27 10 further. Thank you.

02:41:27 11 MR. MITTELSTAEDT: Thank you.

02:41:29 12 Just one second.

02:41:33 13 Okay. Thank you.

02:41:35 14 (Whereupon, witness excused.)

02:41:36 15 THE VIDEOGRAPHER: The time is 2:43  
02:41:37 16 p.m., Wednesday, January 24th, 2007. This  
02:41:45 17 is the end of tape number two and completes  
02:41:47 18 the videotaped deposition of Marianna  
02:41:49 19 Rosen. We're off the record.

02:41:50 20 (Whereupon, off the record.)

02:42:46 21 (Whereupon, videotaped deposition  
02:42:46 22 adjourned 2:42 p.m.)

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C E R T I F I C A T E

I, JOSEPHINE H. FASSETT, a Certified  
Shorthand Reporter and Notary Public within and for  
the State of New York, do hereby certify that  
the witness, MARIANNA ROSEN, whose videotaped  
deposition is hereinbefore set forth, was sworn by me  
on the date indicated, and that the foregoing  
deposition is a true and accurate record of the  
testimony given by such witness.

I FURTHER CERTIFY that I am not employed by  
nor related to any of the parties to this action by  
blood or marriage, and that I am in no way interested  
in the outcome of this matter.

*Josephine H. Fassett*

JOSEPHINE H. FASSETT, CSR, CLR

New York Notary Public