

EXHIBIT B
to
Declaration of Marc Guilford

DEPOSITION OF PETER PATERNO

UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC,
ET AL.,

PLAINTIFFS,

VS.

APPLE COMPUTER, INC.,

DEFENDANT.

CASE NO. 2:07-CV-13164

DEPOSITION OF PETER PATERNO, TAKEN
ON BEHALF OF THE PLAINTIFFS, AT
10250 CONSTELLATION BOULEVARD, 19TH
FLOOR, LOS ANGELES, CALIFORNIA,
COMMENCING AT 2:16 P.M., THURSDAY,
NOVEMBER 20, 2008, BEFORE SAMANTHA
AVENAIM, CSR NUMBER 10627.

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14:23:39 1 A. NO.

14:23:43 2 Q. OKAY. FINE. OKAY. MR. PATERNO,

14:23:47 3 WHEN WERE YOU ENGAGED BY THE DEFENDANTS FOR THE

14:23:49 4 FIRST TIME TO BE AN EXPERT WITNESS IN THIS CASE,

14:23:50 5 THE EIGHT MILE CASE?

14:23:53 6 A. A FEW MONTHS AGO.

14:23:55 7 Q. DID THEY -- HOW DID THAT COME

14:23:56 8 ABOUT?

14:24:00 9 A. THEY CALLED AND ASKED IF I WOULD BE

14:24:01 10 AN EXPERT IN THE CASE.

14:24:04 11 Q. OKAY. AND WHAT DID YOU SAY?

14:24:04 12 A. OKAY.

14:24:08 13 Q. NOW, WHAT DID YOU DO AFTER THAT

14:24:10 14 CONVERSATION TO FAMILIARIZE YOURSELF? LET ME BACK

14:24:14 15 UP ONE SECOND. DID THEY TELL YOU WHAT TOPICS THEY

14:24:15 16 WANTED YOU TO BE AN EXPERT ON IN CONNECTION WITH

14:24:16 17 THE CASE?

14:24:21 18 A. I DON'T RECALL.

14:24:25 19 Q. AND BETWEEN THAT DATE AND TODAY,

14:24:27 20 DID YOU REVIEW ANY DOCUMENTS IN CONNECTION WITH

14:24:29 21 YOUR ROLE AS AN EXPERT WITNESS IN THE CASE?

14:24:29 22 A. YES.

14:24:31 23 Q. AND WHAT DOCUMENTS DID YOU REVIEW?

14:24:36 24 A. THE REPORTS OF MR. ABRAMS AND

25 MR. SULLIVAN AND THE DEPOSITION TRANSCRIPT FOR

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14:24:47 1 MR. ABRAMS AND PART OF THE DEPOSITION TRANSCRIPT
14:24:49 2 FOR ME.

14:24:50 3 Q. YOUR INITIAL DEPOSITION?

14:24:51 4 A. YES.

14:24:53 5 Q. YOU DID NOT REVIEW THE DEPOSITION
14:24:55 6 TRANSCRIPT FOR MR. SULLIVAN?

14:24:56 7 A. IT WAS TOO LONG.

14:24:59 8 Q. OKAY. YOU READ THE ENTIRETY OF
14:25:01 9 MR. ABRAMS' DEPOSITION TESTIMONY?

14:25:06 10 A. PRETTY MUCH. I MIGHT HAVE SKIPPED
14:25:09 11 A FEW PAGES, BUT MOST OF IT, YES.

14:25:11 12 Q. AND HOW WAS IT DETERMINED WHAT
14:25:14 13 PORTIONS OF MR. SULLIVAN AND MR. ABRAMS' REPORTS
14:25:18 14 YOU WOULD BE SERVING AS AN EXPERT WITNESS -- LET
14:25:19 15 ME BACK UP ONE SECOND.

14:25:22 16 WHEN YOU WERE FIRST ENGAGED AS AN
14:25:25 17 EXPERT PRIOR TO SEEING MR. ABRAMS OR
14:25:28 18 MR. SULLIVAN'S EXPERT REPORTS, WHAT WERE THE

14:25:30 19 TOPICS YOU WERE ASKED TO BE AN EXPERT ON?

14:25:31 20 MR. POMERANTZ: OBJECTION; ASKED
14:25:31 21 AND ANSWERED.

14:25:32 22 BY MR. BUSCH:

14:25:32 23 Q. SPECIFICALLY.

14:25:34 24 A. TELL ME AGAIN WHAT THE QUESTION IS.

25 Q. MY QUESTION IS: SPECIFICALLY IN

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14:25:38 1 CONNECTION WITH THE CASE, ARE YOU FAMILIAR OR WERE
14:25:41 2 YOU FAMILIAR WITH THE FACTS INVOLVED IN THE CASE
14:25:43 3 BEFORE THE TIME THAT YOU WERE ASKED TO BE AN
14:25:43 4 EXPERT?

14:25:47 5 A. WELL, YOU DEPOSED ME EARLIER, SO
14:25:48 6 I'M GENERALLY FAMILIAR WITH THEM.

14:25:50 7 Q. DID YOU REVIEW THE COMPLAINT? DID
14:25:51 8 YOU DO ANY OF THOSE TYPES OF THINGS?

14:25:52 9 A. IN WHAT PERIOD?

14:25:55 10 Q. EITHER AFTER YOUR DEPOSITION --
14:25:58 11 LET'S TAKE THE PERIOD AFTER YOUR DEPOSITION BUT
14:26:00 12 BEFORE THE TIME THAT THEY CONTACTED YOU TO BE AN
14:26:01 13 EXPERT.

14:26:01 14 A. NO.

14:26:04 15 Q. AFTER THE -- WHEN THEY CONTACTED
14:26:07 16 YOU TO BE AN EXPERT, CAN YOU TELL ME EXACTLY WHAT
14:26:09 17 IT WAS THE PERSON WHO CONTACTED YOU ASKED YOU TO
14:26:11 18 BE AN EXPERT ON SPECIFICALLY?

14:26:12 19 MR. POMERANTZ: OBJECTION; ASKED
14:26:13 20 AND ANSWERED.

14:26:14 21 THE DEPONENT: I DON'T REALLY
14:26:15 22 REMEMBER, ACTUALLY.

14:26:15 23 BY MR. BUSCH:

14:26:19 24 Q. WAS THERE A SPECIFIC TOPIC? WAS IT
25 CONTROLLED COMPOSITION CLAUSES? WAS IT LICENSING?

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14:26:23 1 WAS THERE ANY DISCUSSION AT ALL ABOUT WHAT THE
14:26:29 2 SPECIFIC TOPIC YOU WOULD BE AN EXPERT ON WOULD BE?

14:26:33 3 A. I'M NOT SAYING THERE WASN'T. I
14:26:35 4 DON'T REMEMBER. IT WAS ONE OF, YOU KNOW, 30 PHONE
14:26:37 5 CALLS I GOT THAT DAY. WHATEVER.

14:26:39 6 Q. WHO WAS IT THAT CALLED IT?

14:26:42 7 A. I THINK IT WAS GLENN POMERANTZ.

14:26:44 8 Q. HOW LONG DID THE CONVERSATION LAST?

14:26:46 9 A. I DON'T RECALL IT LASTING VERY LONG
14:26:47 10 AT ALL.

14:26:48 11 Q. WAS THERE A SUBSEQUENT CONVERSATION
14:26:50 12 WHERE THE TWO OF YOU OR SOMEONE ELSE FROM
14:26:53 13 MR. POMERANTZ'S FIRM DISCUSSED WHAT SPECIFICALLY
14:26:55 14 YOU WOULD BE ASKED TO TESTIFY ABOUT?

14:26:56 15 A. ON THE PHONE?

14:26:57 16 Q. ON THE PHONE.

14:27:00 17 A. NO. I DON'T THINK ANYWAY. I DON'T
14:27:00 18 REMEMBER --

14:27:02 19 Q. OKAY.

14:27:03 20 A. -- ANYTHING.

14:27:04 21 Q. WHAT ABOUT IN PERSON?

14:27:08 22 A. EARLIER TODAY WE TALKED ABOUT
14:27:10 23 WHAT -- WHAT THEY WANTED ME TO TALK ABOUT.

14:27:12 24 Q. BETWEEN THE FIRST CONVERSATION WITH
25 MR. POMERANTZ AND TODAY, DID YOU HAVE ANY

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14:27:17 1 CONVERSATIONS WITH MR. POMERANTZ, OR ANYONE ELSE
14:27:19 2 FROM HIS FIRM, REGARDING WHAT HE WANTED YOU
14:27:22 3 SPECIFICALLY TO TESTIFY ABOUT AS AN EXPERT IN THIS
14:27:22 4 CASE?

14:27:24 5 A. I'M NOT SAYING I DIDN'T, BUT I
14:27:28 6 CERTAINLY DON'T REMEMBER IT. IT WASN'T ANYTHING
14:27:30 7 SUBSTANTIVE OR, YOU KNOW, SIGNIFICANT. I DON'T
14:27:32 8 REALLY REMEMBER THE CONVERSATIONS IN DETAIL. BUT
14:27:34 9 I DON'T THINK IT WAS ANYTHING SPECIFIC.

14:27:41 10 Q. OKAY. HOW DID YOU GET THE EXPERT
14:27:44 11 REPORTS OF MR. ABRAMS AND MR. SULLIVAN TO REVIEW?

14:27:48 12 A. MR. POMERANTZ SENT THEM TO ME.

14:27:50 13 Q. WHEN DID YOU GET THEM?

14:27:52 14 A. A FEW WEEKS AGO.

14:27:54 15 Q. OKAY. WERE -- WHEN YOU SAY "A FEW
14:27:57 16 WEEKS AGO," WOULD IT HAVE BEEN IN NOVEMBER
14:27:58 17 SOMETIME?

14:28:03 18 A. WELL, HE SENT SOME THINGS TO ME --

14:28:07 19 PROBABLY IT WAS MORE LIKE OCTOBER, BUT I CARRIED
14:28:10 20 THEM AROUND IN MY BRIEFCASE FOR THE WHOLE TIME,
14:28:13 21 AND I NEVER LOOKED AT THEM. SO HE RE-SENT THEM,
14:28:16 22 BUT THEN I FOUND THEM, AND IT WAS THE TWO EXPERT
14:28:16 23 REPORTS.

14:28:17 24 Q. WHEN DID HE RE-SEND THEM?

25 A. A FEW DAYS AGO. MAYBE LAST WEEK.

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14:28:22 1 Q. WAS THAT THE FIRS

14:28:23 2 AT THEM?

14:28:24 3 A. YES.

14:28:27 4 Q. OKAY. SO TODAY

14:28:30 5 SO IT WOULD BE FAIR TO SAY THA'

14:28:34 6 LOOKED AT THE EXPERT REPORTS OR ANY MATERIAL

14:28:37 7 REGARDING THIS CASE, THIS TIME OF YOUR DEPOSITION,

14:28:39 8 WOULD HAVE BEEN IN THE LAST WEEK?

14:28:40 9 A. YES. I THINK THAT'S RIGHT.

14:28:45 10 Q. OKAY. AND WHILE YOU HAD A SHORT

14:28:48 11 CONVERSATION WITH MR. POMERANTZ WHEN HE ASKED YOU

14:28:53 12 TO BE AN EXPERT, BETWEEN THAT TIME AND TODAY, THE

14:28:56 13 FIRST CONVERSATION THAT YOU CAN RECALL WHERE YOU

14:28:58 14 AND SOMEONE FROM HIS FIRM OR MR. POMERANTZ

14:29:01 15 DISCUSSED WHAT THEY WANTED YOU TO TESTIFY ABOUT

14:29:02 16 WAS THIS MORNING?

14:29:04 17 A. YES. I MEAN, YES. THAT'S RIGHT.

14:29:10 18 Q. AND TODAY IS NOVEMBER 20TH.

14:29:11 19 A. OKAY.

14:29:15 20 Q. OKAY. NOW, TELL ME ABOUT THE

14:29:20 21 CONVERSATION TODAY ON NOVEMBER 20TH WHERE

14:29:22 22 MR. POMERANTZ TOLD YOU WHAT THEY WANTED YOU TO

14:29:22 23 TESTIFY ABOUT.

14:29:23 24 MR. POMERANTZ: I WOULD ASK YOU TO

25 LIMIT IT ONLY TO THE THREE SUBJECT MATTERS THAT I

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14:29:28 1 IDENTIFIED EARLIER SINCE THAT'S WHAT WE'RE
14:29:29 2 DESIGNATING YOU ON.
14:29:31 3 TO THE EXTENT WE HAD CONVERSATIONS
14:29:33 4 ABOUT ANYTHING OTHER THAN THOSE THREE SUBJECT
14:29:34 5 MATTERS, I WOULD INSTRUCT YOU NOT TO ANSWER.
14:29:36 6 MR. BUSCH: ON WHAT GROUNDS?
14:29:36 7 MR. POMERANTZ: IT'S PRIVILEGED.
14:29:37 8 MR. BUSCH: IN WHAT WAY?
14:29:38 9 MR. POMERANTZ: BECAUSE WE
14:29:41 10 REPRESENT HIM AS A WITNESS IN THIS CASE, AND WE'RE
14:29:44 11 ONLY DESIGNATING HIM AS AN EXPERT ON THOSE THREE
14:29:44 12 SUBJECT MATTERS.
14:29:45 13 MR. BUSCH: I DISAGREE. I THINK
14:29:45 14 THAT AS AN EXPERT I'M ENTITLED TO KNOW --
14:29:47 15 REGARDLESS OF WHAT YOUR DESIGNATION WAS, I'M
14:29:49 16 ENTITLED TO KNOW EVERYTHING THAT WAS DISCUSSED.
14:29:51 17 SO I'D ASK YOU TO WITHDRAW THAT
14:29:54 18 OBJECTION AND ALLOW ME TO QUESTION HIM ABOUT
14:29:55 19 ANYTHING THAT YOU AND HE DISCUSSED TODAY.
14:29:56 20 MR. POMERANTZ: NO, I'M NOT GOING
14:29:58 21 TO DO SO. I THINK MY INSTRUCTION IS PROPER UNDER
14:29:59 22 THE RULES.
14:30:02 23 AND I WOULD AGAIN INSTRUCT YOU TO
14:30:05 24 LIMIT YOUR ANSWER TO THE DISCUSSIONS YOU RECALL
25 RELATING TO THE THREE SUBJECT MATTERS I

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14:30:07 1 IDENTIFIED.

14:30:09 2 MR. BUSCH: I OBJECT, AND I'LL MOVE

14:30:13 3 TO STRIKE MR. PATERNO'S EXPERT TESTIMONY AS A

14:30:13 4 RESULT.

14:30:14 5 BY MR. BUSCH:

14:30:14 6 Q. GO AHEAD.

14:30:15 7 A. CAN I LEAVE?

14:30:18 8 Q. IF YOU DON'T WANT TO BE AN EXPERT,

14:30:18 9 YOU CAN.

14:30:23 10 A. WE GENERALLY TALKED ABOUT MY

14:30:27 11 OPINING ON THINGS THAT I KNOW ABOUT, WHICH IS

14:30:30 12 CUSTOM AND PRACTICE IN THE MUSIC INDUSTRY AS IT

14:30:42 13 RELATES TO CONTROLLED COMPOSITION CLAUSES AND

14:30:45 14 WHATEVER THOSE OTHER TWO THINGS THAT HE SAID THAT

14:30:47 15 I'M GOING TO TALK ABOUT ARE.

14:30:49 16 Q. OKAY. WHAT ARE THOSE OTHER TWO --

14:30:50 17 OH, WHAT ARE THOSE OTHER TWO THINGS?

14:30:53 18 A. I COULD LOOK AND I COULD REMEMBER.

14:30:54 19 I DON'T REALLY REMEMBER.

14:30:57 20 Q. CAN YOU TELL ME WHAT YOUR -- OTHER

14:31:00 21 THAN YOUR KNOWLEDGE AS AN ATTORNEY ABOUT CUSTOM

14:31:03 22 AND PRACTICE IN THE INDUSTRY AS IT RELATES TO

14:31:05 23 CONTROLLED COMPOSITION CLAUSES, IS THERE ANYTHING

14:31:07 24 THAT YOU CAN RECALL RIGHT NOW THAT YOU'RE AN

25 EXPERT ON THAT WAS COVERED IN MR. ABRAMS' OR

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14:31:13 1 MR. SULLIVAN'S EXPERT REPORTS?

14:31:16 2 A. ARE THERE OTHER THINGS IN THOSE
14:31:17 3 REPORTS THAT I KNOW ABOUT?

14:31:19 4 Q. THAT YOU ARE AN EXPERT ON, THAT YOU
14:31:20 5 CONSIDER YOURSELF AN EXPERT.

14:31:23 6 A. I'M REALLY NOT FAMILIAR WITH WHAT
14:31:26 7 IT TAKES TO BE AN EXPERT. I'VE PRACTICED MUSIC
14:31:29 8 AND COPYRIGHT LAW FOR A LONG TIME, AND I KNOW A
14:31:30 9 LOT ABOUT THOSE SUBJECTS.

14:31:32 10 SO I CONSIDER MYSELF TO BE AN
14:31:35 11 EXPERT IN THOSE AREAS, AND A LOT OF THAT IS
14:31:36 12 COVERED IN THOSE TWO REPORTS.

14:31:37 13 Q. DO YOU KNOW WHY YOU'RE ONLY BEING
14:31:40 14 DESIGNATED ON THREE SENTENCES IN THE TWO REPORTS
14:31:43 15 RATHER THAN THE REMAINDER OF THE REPORTS?

14:31:44 16 A. WELL, I DON'T REALLY KNOW. BUT,
14:31:48 17 YOU KNOW, I DON'T PRETEND TO BE AN EXPERT -- I
14:31:51 18 DON'T PRETEND TO BE A LEGAL SCHOLAR IN THE

14:31:51 19 COPYRIGHT ACT.

14:31:54 20 I CERTAINLY KNOW A LOT ABOUT IT,
14:31:56 21 BUT I WOULDN'T -- YOU KNOW, I WOULDN'T PUT MYSELF
14:32:00 22 UP WITH PROFESSOR NIMMER AS AN EXPERT IN THE
14:32:03 23 COPYRIGHT ACT. SO PROBABLY IF I WERE DESIGNATING
14:32:04 24 AN EXPERT IN THE COPYRIGHT ACT, I WOULD DESIGNATE
25 PROFESSOR NIMMER AND NOT ME.

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14:34:02 1 IN YOUR CAPACITY AS A PARTNER IN A
14:34:05 2 LAW FIRM, I TAKE IT YOU HAVE NOT BEEN INVOLVED
14:34:11 3 WITH THE LICENSING OF COMPOSITIONS, FOR EXAMPLE,
14:34:18 4 FOR PERMANENT DOWNLOADS SPECIFICALLY WITH RECORD
14:34:19 5 LABELS?

14:34:23 6 A. WELL, THAT WOULDN'T BE A FAIR
14:34:26 7 STATEMENT, THAT I AM INVOLVED IN IT. I DON'T
14:34:29 8 ISSUE THE LICENSES. THE PARALEGAL DOES THAT, BUT
14:34:31 9 I'M INVOLVED IN IT.

14:34:32 10 Q. HOW ARE YOU INVOLVED IN IT?

14:34:34 11 A. IF THERE IS A PROBLEM OR SOMETHING
14:34:36 12 COMES UP OR SOMEBODY WANT TO -- I, YOU KNOW, I'M A
14:34:38 13 PARTNER IN THE FIRM. SO IF THERE ARE ISSUES, I
14:34:40 14 TALK TO THE PEOPLE WHO ARE DOING THE DAY-TO-DAY
14:34:43 15 WORK. BUT HAVE I ISSUED A LICENSE FOR A DIGITAL
14:34:44 16 DOWNLOAD? NO.

14:34:45 17 Q. I GUESS LET'S BACK UP FOR A SECOND.

14:34:46 18 ARE YOU AWARE THAT THERE ARE
14:34:53 19 CERTAIN COMPANIES THAT RECORD LABELS HIRE TO GO
14:34:58 20 OUT AND SECURE PERMANENT DOWNLOAD LICENSES FROM
14:35:00 21 MUSIC PUBLISHERS?

14:35:01 22 MR. POMERANTZ: OBJECTION; LACK OF
14:35:03 23 FOUNDATION, OUTSIDE THE SCOPE OF HIS EXPERT
14:35:05 24 DESIGNATION, AND IT'S ALSO VAGUE AND AMBIGUOUS.

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14:35:06 1 BY MR. BUSCH:

14:35:07 2 Q. GO AHEAD.

14:35:08 3 MR. BUSCH: IF YOU ARE GOING TO LET
14:35:09 4 HIM ANSWER THE QUESTION.

14:35:11 5 MR. POMERANTZ: I WILL GIVE YOU A
14:35:15 6 LITTLE BIT OF A LEASH, BUT WE REALLY DO THINK THAT
14:35:15 7 THIS SHOULD BE VERY LIMITED. YOU HAD YOUR
14:35:16 8 OPPORTUNITY TO QUESTION HIM AS A FACT WITNESS.

14:35:17 9 THIS IS UNLIKE OTHER EXPERT
14:35:20 10 DEPOSITIONS THAT YOU ALREADY HAD YOUR OPPORTUNITY,
14:35:22 11 AND YOU'RE NOT GOING TO USE THIS TO ASK QUESTIONS
14:35:24 12 YOU SHOULD HAVE ASKED IN YOUR FACT DEPOSITION.

14:35:25 13 MR. BUSCH: THAT'S AN ABSOLUTELY
14:35:29 14 RIDICULOUS STATEMENT.

14:35:29 15 BY MR. BUSCH:

14:35:30 16 Q. BUT MY QUESTION IS, MR. PATERNO:
14:35:34 17 ARE YOU AWARE WHETHER OR NOT THERE ARE COMPANIES
14:35:38 18 THAT RECORD LABELS RETAIN TO GO OUT AND SECURE

14:35:43 19 DIGITAL DOWNLOAD LICENSES FROM MUSIC PUBLISHERS?

14:35:43 20 MR. POMERANTZ: SAME OBJECTIONS.

14:35:43 21 BY MR. BUSCH:

14:35:44 22 Q. GO AHEAD.

14:35:46 23 A. NO, I'M NOT, ACTUALLY.

14:35:48 24 Q. OKAY.

25 A. MAJOR LABELS YOU'RE TALKING ABOUT?

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14:35:53 1 Q. MAJOR LABELS, INDEPENDENT LABELS.

14:35:53 2 ANY RECORD LABELS.

14:35:57 3 A. OH, I'M SURE INDEPENDENT LABELS

14:35:59 4 OUTSOURCE IT. WE -- WE DO IT FOR INDEPENDENT

14:35:59 5 LABELS.

14:36:01 6 Q. DO YOU KNOW IF ANY ARMS -- FOR

14:36:04 7 EXAMPLE, AT UNIVERSAL IF THERE IS ANY DISTRIBUTORS

14:36:10 8 OR LABELS WITHIN UNIVERSAL THAT HIRE THIRD PARTIES

14:36:12 9 TO GO OUT AND SECURE PERMANENT DOWNLOAD LICENSES

14:36:14 10 FROM MUSIC PUBLISHERS?

14:36:14 11 MR. POMERANTZ: OBJECTION; LACK OF

14:36:14 12 FOUNDATION.

14:36:14 13 BY MR. BUSCH:

14:36:16 14 Q. GO AHEAD.

14:36:21 15 A. NO, I DON'T.

14:36:25 16 Q. OKAY. DO YOU KNOW WHETHER RECORD

14:36:29 17 LABELS ATTEMPT TO SECURE PERMANENT DOWNLOAD

14:36:34 18 LICENSES FROM MUSIC PUBLISHERS EVEN IF THE RECORD

14:36:37 19 LABELS HAVE A CONTROLLED COMPOSITION CLAUSE IN

14:36:37 20 PLACE?

14:36:39 21 MR. POMERANTZ: OBJECTION;

14:36:40 22 INSTRUCTION NOT TO ANSWER.

14:36:42 23 BEYOND THE SCOPE OF THE EXPERT

14:36:43 24 DESIGNATION.

25 MR. BUSCH: OKAY. AGAIN, I'M GOING

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14:36:46 1 TO REITERATE THAT BY YOUR INSTRUCTION, I'M GOING
14:36:49 2 TO MOVE TO STRIKE MR. PATERNO'S ENTIRE EXPERT
14:36:52 3 TESTIMONY.

14:36:53 4 THE DEPONENT: SO AM I ANSWERING
14:36:53 5 THIS?

14:36:54 6 MR. POMERANTZ: NO.

14:36:55 7 THE DEPONENT: OKAY.

14:36:58 8 BY MR. BUSCH:

14:37:02 9 Q. DO YOU KNOW WHY -- DO YOU KNOW WHY
14:37:09 10 A RECORD LABEL WOULD HIRE A THIRD PARTY TO SECURE
14:37:12 11 PERMANENT DOWNLOAD LICENSES FROM A MUSIC PUBLISHER
14:37:15 12 IF THE RECORD LABEL HAD A CONTROLLED COMPOSITION
14:37:16 13 CLAUSE IN PLACE?

14:37:18 14 MR. POMERANTZ: SAME INSTRUCTION.

14:37:21 15 MR. BUSCH: AND SAME RESERVATION OF
14:37:32 16 RIGHTS.

14:37:34 17 SO THAT I CAN -- MR. POMERANTZ, SO
14:37:39 18 THAT WE DON'T HAVE TO DO THIS DANCE AND WE CAN

14:37:44 19 CONSERVE SOME TIME, I HAVE BROUGHT WITH ME --

14:37:47 20 WELL, LET ME JUST ASK THE QUESTIONS, AND WE'LL SEE
14:37:48 21 WHERE THIS GOES. OKAY.

14:37:51 22 BY MR. BUSCH:

14:37:57 23 Q. DO YOU KNOW WHETHER THE AGREEMENTS
14:38:02 24 BETWEEN RECORD LABELS AND DIGITAL DOWNLOAD
25 PROVIDERS LIKE ITUNES ARE LICENSES OR NOT?

14:38:08 1 MR. POMERANTZ: OBJECTION.

14:38:09 2 OBJECTION; INSTRUCTION NOT TO ANSWER.

14:38:20 3 MR. BUSCH: OKAY.

14:38:20 4 BY MR. BUSCH:

14:38:22 5 Q. WOULD IT BE FAIR TO SAY THAT IF THE

14:38:25 6 AGREEMENTS BETWEEN PERMANENT DOWNLOAD PROVIDERS

14:38:29 7 AND RECORD LABELS ARE LICENSES, THAT THE PERMANENT

14:38:31 8 DOWNLOAD PROVIDERS WOULD BE REQUIRED TO OBTAIN A

14:38:36 9 LICENSE FOR THE MUSICAL COMPOSITION AS WELL AS TO

14:38:37 10 EXPLOIT THE SOUND RECORDING?

14:38:38 11 MR. POMERANTZ: OBJECTION AND

14:38:39 12 INSTRUCTION NOT TO ANSWER.

14:38:41 13 MR. BUSCH: SAME RESERVATION OF

14:39:06 14 RIGHTS.

14:39:07 15 I HAVE BROUGHT WITH ME THE

14:39:11 16 DOCUMENTS THAT MR. PATERNO PRODUCED PURSUANT TO

14:39:13 17 THE SUBPOENA THAT WAS SERVED UPON HIM.

14:39:15 18 IF I MARK THEM AND BEGIN TO ASK

14:39:18 19 QUESTIONS OF THE WITNESS ABOUT THEM, WILL YOU

14:39:19 20 INSTRUCT HIM NOT TO ANSWER?

14:39:19 21 MR. POMERANTZ: YES. I THINK I

14:39:20 22 KNOW WHAT YOU'RE -- YOU'RE TALKING ABOUT THE

14:39:23 23 DOCUMENT RELATING TO THE MARCH '04 LETTER?

14:39:24 24 MR. BUSCH: YES, SIR.

25 MR. POMERANTZ: I WOULD INSTRUCT

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14:39:25 1 HIM NOT TO ANSWER.

14:39:26 2 BY MR. BUSCH:

14:39:30 3 Q. OKAY. SO JUST FOR THE RECORD,
14:39:35 4 MR. PATERNO, A SUBPOENA WAS SERVED ON YOU, WAS IT
14:39:40 5 NOT, CONCERNING A MARCH 2004 LETTER AND YOUR
14:39:44 6 INVOLVEMENT IN CONNECTION WITH THAT LETTER?

14:39:46 7 A. YOU'RE ASKING IF A SUBPOENA WAS --

14:39:47 8 Q. WAS SERVED ON YOUR FIRM.

14:39:47 9 MR. POMERANTZ: WE WILL STIPULATE
14:39:50 10 THAT A SUBPOENA WAS SERVED ON HIS FIRM IN A
14:39:53 11 DIFFERENT LAWSUIT, AND THAT HIS FIRM DID PRODUCE
14:39:56 12 DOCUMENTS IN RESPONSE TO THAT SUBPOENA.

14:39:58 13 AND I WILL ALSO -- YOU DON'T NEED
14:40:00 14 TO MAKE YOUR RECORD. WE AGREE THAT WE ARE
14:40:02 15 INSTRUCTING HIM NOT TO ANSWER. AND TO THE EXTENT
14:40:04 16 YOU WANT TO MOVE ON THAT, YOU CAN. I WOULD SAY
14:40:07 17 THAT WE'RE WE ARE IN THE EIGHT MILE CASE HERE IN
14:40:07 18 THIS DEPOSITION.

14:40:08 19 MR. BUSCH: I UNDERSTAND THAT, BUT
14:40:11 20 THE QUESTION OF WHETHER THE AGREEMENTS ARE
14:40:13 21 LICENSES AND WHAT IMPACT THAT HAS ON THE
14:40:17 22 REQUIREMENT TO GET A DIGITAL DOWNLOAD LICENSE FROM
14:40:20 23 A MUSIC PUBLISHER BEFORE A SONG CAN BE EXPLOITED
14:40:23 24 IS SOMETHING THAT IS AT ISSUE IN THE EIGHT MILE
25 CASE, AND IT DOES -- AND THEREFORE THE DOCUMENTS

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14:40:28 1 THAT WERE PRODUCED RELATING TO MR. PATERNO'S
14:40:32 2 OPINION THAT THE AGREEMENTS ARE LICENSES IS
14:40:33 3 RELEVANT TO THIS CASE.

14:40:35 4 BUT NONETHELESS, YOU'RE GOING TO
14:40:36 5 INSTRUCT HIM NOT TO ANSWER THE QUESTIONS?

14:40:37 6 MR. POMERANTZ: YES. FOR TWO
14:40:42 7 REASONS: NUMBER 1, HE IS ONLY BEING DESIGNATED AS
14:40:42 8 AN EXPERT ON LIMITED TOPICS, AND YOUR QUESTIONING
14:40:45 9 HAS TO BE LIMITED TO THOSE TOPICS.

14:40:47 10 AND NUMBER 2, I DISAGREE WITH YOU
14:40:49 11 TO YOUR STATEMENT THAT THAT WOULD BE RELEVANT IN
14:40:51 12 THE EIGHT MILE LAWSUIT.

14:40:53 13 I THINK IT'S RELEVANT ONLY TO THE
14:40:56 14 F.B.T. LAWSUIT, AND I THINK IT'S IMPROPER TO ASK
14:40:59 15 QUESTIONS IN THE EIGHT MILE DEPOSITION ABOUT
14:41:01 16 ISSUES THAT ARISE IN THE F.B.T. LAWSUIT.

14:41:02 17 MR. BUSCH: AND I'LL JUST SAY IN
14:41:04 18 RESPONSE TO THAT, THAT THAT'S ONE OF THE REASONS

14:41:07 19 THAT IT'S IMPROPER TO INSTRUCT A WITNESS NOT TO
14:41:07 20 ANSWER ON THE GROUNDS OF RELEVANCE BECAUSE ONE DAY
14:41:10 21 A JUDGE WOULD DETERMINE WHETHER IT'S RELEVANT OR
14:41:12 22 NOT, AND I SHOULD BE ABLE TO BUILD MY RECORD AND
14:41:14 23 ASK THE QUESTIONS THAT I WANT TO ASK.

14:41:16 24 AND WE ARE GOING TO TAKE THIS UP
25 WITH THE COURT. WE'LL EITHER MOVE TO STRIKE HIS

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14:41:20 1 TESTIMONY OR ASK THE COURT TO COMPEL, AND WE'LL
14:41:24 2 SEEK OUR COSTS AND FEES FOR HAVING TO COME BACK IF
14:41:27 3 THE COURT AGREES THAT WE'RE RIGHT ON THIS.

14:41:29 4 WHAT I'M GOING TO DO JUST FOR THE
14:41:30 5 RECORD, SO I HAVE A COMPLETE RECORD OF THIS, IS
14:41:33 6 I'LL GO AHEAD AND MARK THE DOCUMENTS JUST AS
14:41:38 7 EXHIBITS TO THIS DEPOSITION AS THE COURT HAS IT AS
14:41:39 8 PART OF THE RECORD IN THE CASE.

14:41:40 9 MR. POMERANTZ: WHY DON'T WE JUST
14:41:42 10 DO THAT DURING THE FIRST BREAK.

14:41:43 11 MR. BUSCH: FINE. FAIR ENOUGH.

14:41:45 12 SO MADAM COURT REPORTER, WOULD YOU
14:41:48 13 MARK THIS PLACE IN THE TRANSCRIPT. AND WHEN WE
14:41:51 14 MARK THE EXHIBITS DURING A BREAK, I WOULD LIKE THE
14:41:54 15 REFERENCE TO THE MARKING OF THE EXHIBITS RELATING
14:41:57 16 TO THE SUBPOENA SERVED ON MR. PATERNO CONCERNING A
14:42:01 17 MARCH 24, 2004, DRAFTS OF THAT LETTER, E-MAILS AND
14:42:04 18 HIS INVOLVEMENT BE PLACED AT THIS POINT IN THE

14:42:04 19 RECORD. THANK YOU.

14:42:04 20 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
14:42:04 21 125 WAS MARKED FOR IDENTIFICATION BY
14:42:10 22 THE DEPOSITION OFFICER AND IS BOUND
14:42:10 23 UNDER SEPARATE COVER.)

14:42:10 24 MR. POMERANTZ: AND TO THE EXTENT
25 THOSE EXHIBITS ARE GOING TO THEN BE INCLUDED IN

DEPOSITION OF PETER PATERNO

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14:42:15 1 THE DEPOSITION TRANSCRIPT, I BELIEVE THAT -- OR
14:42:15 2 EXHIBITS TO THE DEPOSITION TRANSCRIPT, I BELIEVE A
14:42:18 3 NUMBER OF THOSE EXHIBITS HAVE BEEN MARKED
14:42:20 4 "ATTORNEYS' EYES ONLY," AND I WOULD ASK THAT THEY
14:42:23 5 BE BOUND SEPARATELY SO THAT COUNSEL CAN HANDLE IT
14:42:24 6 APPROPRIATELY.

14:42:51 7 MR. BUSCH: OKAY.

14:42:52 8 BY MR. BUSCH:

14:42:53 9 Q. WHY WOULD YOU THINK DON HENLEY
14:43:00 10 SHOULD SUE UNIVERSAL OR THE RECORD LABEL?

14:43:01 11 MR. POMERANTZ: INSTRUCTION NOT TO
14:43:01 12 ANSWER.

14:43:02 13 MR. BUSCH: I THOUGHT YOU'D LET HIM
14:43:02 14 ANSWER THAT ONE.

14:43:28 15 BY MR. BUSCH:

14:43:30 16 Q. ARE YOU FAMILIAR WITH THE
14:43:32 17 PASS-THROUGH PROVISION IN THE COPYRIGHT ACT?

14:43:33 18 MR. POMERANTZ: INSTRUCTION NOT TO
14:43:33 19 ANSWER.

14:43:36 20 WE DID NOT DESIGNATE HIM ON THAT
14:43:37 21 SUBJECT.

14:43:39 22 MR. BUSCH: I HAVE TO SAY,
14:43:42 23 MR. POMERANTZ, THAT HIS KNOWLEDGE OF THESE THINGS
14:43:46 24 DO IMPACT ANY OPINIONS THAT HE WOULD GIVE ON THE
25 TOPICS THAT YOU'VE IDENTIFIED HIM ON.

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14:43:51 1 AND AGAIN, BY INSTRUCTING HIM NOT
14:43:57 2 TO ANSWER, I AM GOING TO SAY THAT WE'RE NOT
14:44:00 3 GETTING A FAIR CHANCE TO EXPLORE THIS WITNESS'S
14:44:02 4 KNOWLEDGE AND THAT HE SHOULD BE PRECLUDED FROM
14:44:03 5 TESTIFYING AS AN EXPERT.

14:44:05 6 MR. POMERANTZ: I DISAGREE. I
14:44:07 7 DON'T BELIEVE THAT -- WE WILL ALLOW YOU FULL AND
14:44:09 8 FAIR QUESTIONING ON THE SUBJECTS THAT WE
14:44:12 9 DESIGNATED HIM ON. THAT'S OUR ONLY OBLIGATION.

14:44:16 10 MR. BUSCH: OKAY. DON'T TAKE MY
14:44:18 11 "OKAY" AS ACCEPTANCE. I MEAN, DON'T TAKE MY
14:44:21 12 "OKAY" AS AGREEING WITH YOU.

14:44:22 13 THE DEPONENT: SURRENDER.

14:44:23 14 MR. BUSCH: I DON'T KNOW IF
14:44:26 15 "SURRENDER" IS THE RIGHT WORD. IT'S JUST AN
14:44:29 16 ACKNOWLEDGMENT THAT YOU CONTROL WHAT HE IS GOING
14:44:31 17 TO TESTIFY ABOUT TODAY.

14:44:33 18 OKAY. LET'S MARK AS

14:44:36 19 EXHIBIT NUMBER -- WE'LL SHOW THE WITNESS WHAT HAS
14:44:44 20 BEEN MARKED AS EXHIBIT NUMBER 230 IN A PRIOR
14:44:48 21 DEPOSITION. IT'S THE EXPERT REPORT OF PATRICK
14:44:48 22 SULLIVAN.

14:44:55 23 DO YOU WANT A COPY?

14:44:55 24 MR. POMERANTZ: THANK YOU.

25 ///

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14:44:56 1 BY MR. BUSCH:

14:44:57 2 Q. MR. PATERNO, WHEN WAS THE FIRST
14:45:01 3 TIME YOU READ THIS REPORT COMPLETELY?

14:45:04 4 A. SUNDAY.

14:45:07 5 Q. MEANING THREE OR FOUR DAYS AGO?

14:45:07 6 A. YES.

14:45:10 7 Q. MR. POMERANTZ HAS SAID THAT YOU ARE
14:45:16 8 GOING TO BE TESTIFYING AS AN EXPERT ON A COUPLE OF
14:45:19 9 SENTENCES WITHIN THIS REPORT, AND I'LL DIRECT YOU
14:45:24 10 TO THOSE SENTENCES.

14:45:25 11 MR. BUSCH: BEFORE I DO,
14:45:27 12 MR. POMERANTZ, IS IT CORRECT THAT IF I WENT LINE
14:45:30 13 BY LINE IN THIS REPORT WITH MR. PATERNO AND ASKED
14:45:34 14 HIM IF HE AGREED OR DISAGREED WITH STATEMENTS OR
14:45:37 15 SENTENCES SEPARATE AND APART FROM THE STATEMENTS
14:45:42 16 OR SENTENCES THAT YOU'VE DESIGNATED HIM ON, THAT
14:45:43 17 YOU WOULD INSTRUCT HIM NOT TO ANSWER?

14:45:45 18 MR. POMERANTZ: YES.

14:45:47 19 MR. BUSCH: ALL RIGHT.

14:45:48 20 BY MR. BUSCH:

14:45:50 21 Q. DIRECT YOUR ATTENTION TO PAGE 12,
14:45:50 22 PLEASE.

14:45:52 23 MR. POMERANTZ: LET ME CLARIFY. IF
14:45:57 24 THERE IS A SENTENCE IN HERE THAT SPECIFICALLY
25 RELATES TO THE OPINION THAT HE IS REBUTTING, THE

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14:49:56 1 CANADIAN LICENSEES FOR THE U.S. AND
14:49:57 2 CANADA RESPECTIVELY AT A RATE EQUAL
14:49:59 3 TO 75 PERCENT OF THE CONTROLLED RATE."
14:50:00 4 DO YOU SEE THAT?
14:50:00 5 A. YES.
14:50:04 6 Q. DO YOU KNOW WHETHER REDUCED RATES
14:50:07 7 LIKE THAT PROVIDED FOR IN THE MECHANICAL ROYALTY
14:50:11 8 SECTION ARE ALLOWED BY LAW TO APPLY TO D.P.D.'S?
14:50:11 9 MR. POMERANTZ: OBJECTION TO THE
14:50:14 10 EXTENT IT REQUIRES A LEGAL CONCLUSION.
14:50:15 11 HE'S NOT HERE AS A LEGAL EXPERT.
14:50:15 12 BY MR. BUSCH:
14:50:19 13 Q. GO AHEAD. DO YOU KNOW WHETHER --
14:50:23 14 DO YOU KNOW WHETHER BY LAW YOU CAN HAVE A REDUCED
14:50:25 15 RATE ON A D.P.D.?
14:50:26 16 MR. POMERANTZ: SAME -- SAME
14:50:27 17 OBJECTION.
14:50:28 18 THE DEPONENT: I THINK YOU CAN.
14:50:28 19 BY MR. BUSCH:
14:50:30 20 Q. AND WHERE -- AND WHAT IS YOUR BASIS
14:50:31 21 FOR SAYING THAT?
14:50:36 22 A. BECAUSE I THINK YOU CAN. I
14:50:37 23 DON'T -- I'M NOT -- I HAVEN'T READ THE COPYRIGHT
14:50:41 24 ACT ON THIS PARTICULAR ISSUE, BUT I DON'T SEE WHY
25 YOU CAN'T.

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14:50:42 1 Q. OKAY. WELL, IF YOU COULDN'T, WOULD
14:50:44 2 THAT AFFECT YOUR OPINION ABOUT WHETHER THIS
14:50:46 3 APPLIED TO D.P.D.'S OR NOT?

14:50:46 4 A. NO.

14:50:47 5 Q. WHY NOT?

14:50:53 6 A. IT STILL APPLIES TO D.P.D.'S. IT
14:50:55 7 MAY -- IT MAY PROVIDE A RATE THAT'S NOT -- THAT'S
14:50:58 8 NOT ENFORCEABLE, BUT IT STILL APPLIES TO D.P.D.'S.
14:51:00 9 I DON'T SEE WHY THAT WOULD CHANGE ANYTHING.

14:51:01 10 Q. HAVE YOU EVER -- HAVE YOU EVER READ
14:51:07 11 THE HISTORY OF THE COPYRIGHT ACT WITH RESPECT TO
14:51:10 12 D.P.D.'S TO DETERMINE WHAT THE LEGISLATIVE INTENT
14:51:14 13 WAS AS IT RELATED TO MECHANICAL ROYALTIES SECTIONS
14:51:18 14 LIKE THIS AND ITS APPLICATION OR NONAPPLICATION TO
14:51:22 15 DIGITAL DOWNLOADS?

14:51:23 16 MR. POMERANTZ: AND JUST SO WE'RE
14:51:29 17 CLEAR, WE ARE DESIGNATING HIM AS AN EXPERT ON HOW
14:51:31 18 PARTICIPANTS IN THE MUSIC INDUSTRY UNDERSTAND

14:51:34 19 WORDS IN A CONTROLLED COMPOSITION CLAUSE, AT LEAST
14:51:35 20 THE WORDS THAT ARE AT ISSUE HERE.

14:51:38 21 ~~WE ARE NOT DESIGNATING HIM AS AN~~
14:51:40 22 EXPERT ON THE COPYRIGHT LAWS.

14:51:41 23 BY MR. BUSCH:

14:51:45 24 Q. DO YOU KNOW WHETHER RECORD LABELS,
25 DESPITE HAVING LANGUAGE LIKE THIS IN A MECHANICAL

14:54:37 1 THAT I READ APPLIES CAPS TO DIGITAL DOWNLOADS.

14:54:40 2 BY MR. BUSCH:

14:54:41 3 Q. DO YOU KNOW WHETHER THERE IS ANY
14:54:44 4 RESTRICTION IN THE COPYRIGHT ACT FOR APPLICATION
14:54:47 5 OF CAPS FOR PERMANENT DOWNLOADS?

14:54:48 6 MR. POMERANTZ: OBJECTION. AGAIN,
14:54:52 7 HE'S NOT AN EXPERT ON COPYRIGHT LAW AND WE'RE NOT
14:54:52 8 DESIGNATING HIM AS THAT, AND IT'S BEYOND THE SCOPE
14:54:54 9 OF HIS TESTIMONY. ALSO A LACK OF FOUNDATION AND
14:54:58 10 IT CALLS FOR A LEGAL CONCLUSION.

14:55:01 11 THE DEPONENT: OKAY. I HAVE READ
14:55:03 12 THINGS THAT SAY THAT. I HAVEN'T READ THE
14:55:04 13 COPYRIGHT ACT.

14:55:04 14 BY MR. BUSCH:

14:55:06 15 Q. YOU'VE READ THINGS THAT HAVE SAID
14:55:06 16 WHAT?

14:55:07 17 A. I READ YOUR EXPERT OPINION, YOUR
14:55:09 18 EXPERT'S OPINION, AND HE SAYS THAT THE COPYRIGHT
14:55:12 19 ACT PROVIDES THAT. I'M NOT SURE I AGREE WITH
14:55:16 20 THAT. BUT I HAVEN'T READ THE COPYRIGHT ACT.

~~14:55:18 21 Q. LET'S JUST SAY, FOR EXAMPLE, THAT~~
14:55:21 22 THIS MECHANICAL ROYALTY SECTION DOES HAVE A
14:55:24 23 RESTRICTION ON CAPS; RIGHT? IT SAYS "CAP
14:55:25 24 RESTRICTION"?

25 A. IT HAS A CAP.

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14:57:40 1 BY MR. BUSCH:

14:57:41 2 Q. IS THERE ANY DEFINITION UNDER
14:57:46 3 MECHANICAL ROYALTIES, ANY MENTION OR REFERENCE TO
14:57:49 4 A DEFINED TERM UNDER MECHANICAL ROYALTIES THAT
14:57:52 5 WOULD SHOW THAT IT WAS MEANT TO BE APPLICABLE TO
14:57:54 6 PERMANENT DOWNLOADS?

14:57:54 7 MR. POMERANTZ: OBJECTION TO THE
14:57:56 8 EXTENT IT'S ALREADY BEEN ASKED AND ANSWERED.

14:57:59 9 THE DEPONENT: TWO ANSWERS. FIRST
14:58:01 10 OF ALL, IT DOESN'T SAY IT'S NOT. AND SECOND OF
14:58:04 11 ALL, EVERY PRACTITIONER IN THE MUSIC INDUSTRY
14:58:05 12 KNOWS THAT IT IS.

14:58:05 13 BY MR. BUSCH:

14:58:06 14 Q. YOU SAY "EVERY." HAVE YOU SPOKEN
14:58:08 15 TO EVERY PRACTITIONER IN THE MUSIC INDUSTRY ABOUT
14:58:09 16 IT?

14:58:10 17 A. NO, I HAVEN'T.

14:58:12 18 Q. HAVE YOU SPOKEN TO ANY PRACTITIONER
14:58:15 19 IN THE MUSIC BUSINESS ABOUT WHETHER THIS SPECIFIC
14:58:18 20 PROVISION, AS IT'S WORDED HERE, APPLIES TO
14:58:19 21 PERMANENT DOWNLOADS?

14:58:19 22 A. NO.

14:58:26 23 Q. DO YOU KNOW WHETHER UNIVERSAL
14:58:29 24 INTERSCOPE SOUGHT SPECIFIC PERMANENT DOWNLOAD
25 LICENSES FROM THE PUBLISHER OF THE COMPOSITIONS

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14:58:36 1 INVOLVED IN THIS -- IN THE SONGS INVOLVED IN THIS
14:58:36 2 AGREEMENT?

14:58:37 3 MR. POMERANTZ: OBJECTION; LACK OF
14:58:39 4 FOUNDATION.

14:58:42 5 THE DEPONENT: I DON'T KNOW. AS A
14:58:46 6 PERCIPIENT WITNESS, I READ IN SOME OF THE STUFF I
14:58:51 7 READ, IT REFERS TO THE FACT THAT UNIVERSAL DID. I
14:58:53 8 HAVE NO WAY OF KNOWING WHETHER THAT'S TRUE OR NOT.
14:58:54 9 BY MR. BUSCH:

14:58:56 10 Q. DO YOU KNOW WHETHER UNIVERSAL
14:58:59 11 ENTERED INTO A DIGITAL DOWNLOAD LICENSE WHERE IT
14:59:03 12 AGREED TO A SPECIFIC TERM OF TWO YEARS AND OTHER
14:59:08 13 LIMITATIONS ON ITS -- IN CONNECTION WITH LICENSING
14:59:10 14 ONE OF THE COMPOSITIONS FOR PERMANENT DOWNLOAD?

14:59:11 15 MR. POMERANTZ: OBJECTION TO THE
14:59:14 16 EXTENT IT MISSTATES EVIDENCE.
14:59:14 17 BY MR. BUSCH:

14:59:15 18 Q. GO AHEAD.

14:59:17 19 A. THE ANSWER IS NO.

14:59:20 20 Q. OKAY. IF UNIVERSAL AGREED TO A
14:59:24 21 PERMANENT DOWNLOAD LICENSE WITH THE PUBLISHER OF A
14:59:25 22 SONG THAT WOULD BE COVERED BY THIS AGREEMENT AND
14:59:27 23 AGREED TO A TWO-YEAR TERM, FOR EXAMPLE, DO YOU
14:59:29 24 HAVE ANY EXPLANATION OF WHY THEY WOULD DO SO IF
25 THIS WAS IN FACT A SELF-EFFECTUATING CONTROLLED

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14:59:37 1 COMPOSITION CLAUSE APPLICABLE TO D.P.D.'S?

14:59:38 2 MR. POMERANTZ: OBJECTION; LACK OF
14:59:41 3 FOUNDATION, ARGUMENTATIVE, INCOMPLETE.

14:59:41 4 BY MR. BUSCH:

14:59:42 5 Q. GO AHEAD.

14:59:45 6 A. IT COULD BE ANY NUMBER OF REASONS.

14:59:47 7 I DON'T -- PEOPLE MAKE DEALS ALL THE TIME. THEY

14:59:49 8 MIGHT HAVE WANTED -- MIGHT HAVE WANTED EMINEM TO

14:59:51 9 DELIVER A RECORD HE WOULDN'T OTHERWISE DELIVER.

14:59:53 10 I HAVE NO IDEA. THERE IS NO WAY I
14:59:54 11 WOULD KNOW.

15:00:01 12 Q. OKAY. YOU SAY YOU DISAGREE THAT
15:00:03 13 THIS IS NOT -- I THINK ONE OF THE STATEMENTS YOU
15:00:06 14 MADE WHEN I READ THE SENTENCE AND ASKED YOU ABOUT
15:00:09 15 YOUR OPINIONS IN RESPONSE TO IT WAS THAT YOU
15:00:16 16 DISAGREED THAT THIS WAS NOT A SELF-EFFECTUATING
15:00:17 17 CONTROLLED COMPOSITION CLAUSE; CORRECT?

15:00:18 18 MR. POMERANTZ: CAN YOU RESTATE
15:00:19 19 THAT QUESTION? I DIDN'T FOLLOW IT.

15:00:19 20 BY MR. BUSCH:

15:00:21 21 Q. OKAY. DO YOU BELIEVE THIS TO BE A
15:00:23 22 SELF-EFFECTUATING LICENSE?

15:00:24 23 MR. POMERANTZ: OBJECTION TO THE
15:00:26 24 TERM "SELF-EFFECTUATING." IT'S VAGUE AND
25 AMBIGUOUS.

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15:00:27 1 THE DEPONENT: YEAH, I AGREE WITH
15:00:29 2 THAT. I AGREE THAT IT'S VAGUE AND AMBIGUOUS.
15:00:31 3 BUT I KNOW WHAT YOU'RE GETTING AT,
15:00:33 4 AND WHAT YOU'RE GETTING AT IS YOU'RE ASKING
15:00:37 5 WHETHER OR NOT THIS OPERATES AS A MECHANICAL
15:00:38 6 LICENSE.
15:00:38 7 BY MR. BUSCH:
15:00:39 8 Q. FAIR ENOUGH.
15:00:39 9 A. I BELIEVE IT DOES.
15:00:41 10 Q. CAN YOU TELL ME WHY YOU BELIEVE IT
15:00:41 11 DOES?
15:00:45 12 A. I BELIEVE IT DOES BECAUSE I'VE BEEN
15:00:48 13 PRACTICING IN THIS AREA FOR A LONG TIME WITH A LOT
15:00:53 14 OF DIFFERENT ATTORNEYS, AND CONTROLLED COMPOSITION
15:00:57 15 CLAUSES ARE ALL THAT WAY.
15:01:03 16 THEY'RE ALL -- THE INTENT OF THIS
15:01:06 17 THING IS TO PROVIDE A LICENSE AT WHATEVER RATE
15:01:09 18 THAT'S SET FORTH IN THE CONTROLLED COMPOSITION,
15:01:14 19 AND THE CUSTOM AND PRACTICE OF PEOPLE THAT WORK IN
15:01:16 20 THIS INDUSTRY KNOW THAT THAT'S WHAT THIS IS
15:01:17 21 SUPPOSED TO BE.
15:01:18 22 Q. WHO HAVE YOU SPOKEN TO ABOUT THAT?
15:01:19 23 A. NOBODY.
15:01:26 24 Q. HAVE YOU EVER SPOKEN TO ANYBODY
25 ABOUT THE USE OF THE PHRASE "ALL CONTROLLED

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15:01:34 1 COMPOSITIONS WILL BE LICENSED" AS OPPOSED TO "IS
15:01:37 2 HEREBY LICENSED" AND THE IMPACT THAT HAS ON
15:01:41 3 WHETHER IT'S A -- WHETHER IT, IN AND OF ITSELF, IS
15:01:42 4 A MECHANICAL LICENSE?

15:01:46 5 A. HAVE I SPOKEN TO ANY -- WHEN YOU
15:01:47 6 SAY "ANYBODY," WHAT DO YOU MEAN?

15:01:49 7 Q. WHAT I'M ASKING IS: HAVE YOU EVER
15:01:51 8 HAD ANY DISCUSSION WITH PEOPLE IN THE MUSIC
15:01:54 9 BUSINESS OR MUSIC INDUSTRY ABOUT WHAT EFFECT, IF
15:01:59 10 ANY, THERE IS WHEN A MECHANICAL ROYALTY SAYS THAT
15:02:02 11 ALL CONTROLLED COMPOSITIONS WILL BE LICENSED AS
15:02:04 12 OPPOSED TO IS HEREBY LICENSED?

15:02:06 13 A. I WAS GOING TO SAY NO, BUT NOW I
15:02:11 14 RECALL THAT AFTER MY LAST -- AND I KNOW YOU'RE
15:02:14 15 GOING TO ASK ME WHO THEY ARE, AND I HAVE NO IDEA.
15:02:15 16 SO I'LL SAVE YOU THE TROUBLE ASKING.

15:02:17 17 BUT I WAS HAVING CONVERSATIONS WITH
15:02:20 18 SEVERAL MUSIC ATTORNEYS ABOUT HOW ABSURD THE
15:02:21 19 POSITION WAS THAT THERE WAS ANY DIFFERENCE BETWEEN
15:02:24 20 THE TWO -- THE TWO LANGUAGE POINTS. NO IDEA WHO
15:02:24 21 IT WAS.

15:02:45 22 Q. OKAY. WHERE IT SAYS THAT ALL
15:02:47 23 CONTROLLED COMPOSITIONS WILL BE LICENSED TO
15:02:49 24 AFTERMATH AND ITS DISTRIBUTOR'S LICENSEES.

25 DO YOU SEE THAT?

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15:02:50 1 A. YES.

15:02:53 2 Q. ARE DISTRIBUTOR'S LICENSEES
15:02:53 3 AFFILIATED OR UNAFFILIATED DISTRIBUTORS OR
15:02:57 4 LICENSEES?

15:02:57 5 MR. POMERANTZ: I'M GOING TO
15:02:59 6 INSTRUCT HIM NOT TO ANSWER.

15:02:59 7 YOU HAVE A SEPARATE PROVISION, A
15:03:00 8 SEPARATE PORTION OF YOUR REPORT THAT ADDRESSES
15:03:04 9 THAT ISSUE, AND WE HAVE CHOSEN NOT TO DESIGNATE
15:03:07 10 MR. PATERNO AS AN EXPERT TO REBUT THAT POINT, SO I
15:03:08 11 WILL INSTRUCT HIM NOT TO ANSWER.

15:03:10 12 AND BY THE WAY, YOU DID ASK HIM
15:03:13 13 THAT QUESTION AS A FACT WITNESS, SO YOU ALREADY
15:03:15 14 HAVE THAT IN THE DEPOSITION.

15:03:17 15 MR. BUSCH: I REMEMBER ASKING A
15:03:20 16 COUPLE PEOPLE, BUT I WASN'T SURE IF I ASKED
15:03:20 17 MR. PATERNO.

15:03:27 18 MR. POMERANTZ: YOU DID.

15:03:28 19 THE VIDEOGRAPHER: OFF THE RECORD
15:10:28 20 AT 3:03 P.M.

15:10:30 21 (WHEREUPON, A RECESS WAS HELD

15:10:30 22 FROM 3:03 P.M. TO 3:10 P.M.)

15:10:31 23 THE VIDEOGRAPHER: BACK ON THE

15:10:32 24 RECORD AT 3:10 P.M.

25 ///

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15:14:52 1 BY MR. BUSCH:

15:14:55 2 Q. YOU SAID, MR. PATERNO, YOU HAVE NOT
15:14:58 3 READ THE DIGITAL PERFORMANCE RIGHT AND SOUND
15:14:59 4 RECORDING ACT OF 1995?

15:15:05 5 A. I DON'T KNOW THAT THAT'S TRUE. I
15:15:06 6 PROBABLY HAVE READ IT.

15:15:09 7 Q. YOU HAVEN'T READ THE LEGISLATIVE
15:15:09 8 HISTORY?

15:15:10 9 A. I HAVEN'T READ THAT.

15:15:11 10 Q. HAVE YOU READ IT -- HAVE YOU READ
15:15:14 11 IT IN THE CONTEXT OF THE ISSUES INVOLVED IN THIS
15:15:14 12 CASE?

15:15:43 13 A. NO.

15:15:43 14 MR. BUSCH: OKAY. I'M GOING TO
15:15:49 15 SHOW HIM THAT LEGISLATURE HISTORY. WILL YOU ALLOW
15:15:51 16 ME TO ASK HIM QUESTION ABOUT THAT? YOU KNOW WHICH
15:15:51 17 ONE I'M GOING TO ASK HIM ABOUT, I WOULD ASSUME,
15:15:53 18 SINCE IT'S THE ONE THAT HAS COME UP IN THE
15:15:53 19 DEPOSITION.

15:15:55 20 MR. POMERANTZ: I'M NOT -- I MEAN,
15:15:58 21 I'M NOT -- I THINK PROBABLY NOT. BUT IF YOU WANT
15:16:01 22 TO TRY IT, I'LL LOOK AT IT AND SEE IF IT RELATES
15:16:02 23 TO HIS THREE OPINIONS.

15:16:02 24 BY MR. BUSCH:

25 Q. TAKE A LOOK AT WHAT I MARKED AS

15:16:08 1 EXHIBIT 249, WHICH IS THE LEGISLATIVE HISTORY OF
15:16:08 2 THE ACT.

15:16:12 3 (DOCUMENT REVIEWED BY DEPONENT.)

15:16:16 4 THE DEPONENT: WOW.

15:16:17 5 MR. BUSCH: I DON'T WANT HIM TO SIT
15:16:17 6 HERE AND READ THE WHOLE THING.

15:16:18 7 BY MR. BUSCH:

15:16:31 8 Q. TURN, IF YOU WOULD, TO PAGE 41.

15:16:35 9 TOP MIDDLE 41, NOT 41 OF.

15:16:36 10 A. UH-HUH.

15:16:45 11 Q. AND I WANT TO DIRECT YOUR ATTENTION
15:16:51 12 TO THE LANGUAGE AT THE VERY BOTTOM WHERE IT SAYS,
15:16:53 13 BEGINS WITH, "SUBJECT TO THE EXCEPTIONS."

15:16:55 14 "SUBJECT TO THE EXCEPTIONS SET FORTH
15:16:58 15 IN SUBPARAGRAPH (E) (II) --

15:16:59 16 A. WHERE ARE YOU AT?

15:17:01 17 Q. LAST SENTENCE OF PAGE 41.

15:17:01 18 A. OKAY.

15:17:03 19 Q. "SUBJECT TO THE EXCEPTION

15:17:05 20 SET FORTH IN PARAGRAPH (E) (II,)

15:17:07 21 THE SECOND SENTENCE OF SUBPARAGRAPH

15:17:09 22 (E) (I) IS INTENDED TO MAKE THESE

15:17:12 23 CONTROLLED COMPOSITION CLAUSES

15:17:15 24 INAPPLICABLE TO DIGITAL FORMER

25 RECORD DELIVERIES."

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15:17:17 1 DO YOU SEE THAT?

15:17:17 2 A. YES.

15:17:19 3 Q. DID YOU EVER STUDY THAT OR LOOKED

15:17:21 4 AT THAT IN CONNECTION WITH THIS LAWSUIT TO SEE

15:17:25 5 WHETHER THIS LANGUAGE WOULD MAKE CONTROLLED

15:17:27 6 COMPOSITION CLAUSES INAPPLICABLE TO D.P.D.'S BY

15:17:30 7 VIRTUE OF THE -- OF THE ACT?

15:17:30 8 A. NO.

15:17:44 9 Q. AND HAVE YOU EVER READ THE

15:17:46 10 PARAGRAPH THAT FOLLOWS ON PAGE 42?

15:17:46 11 A. NO.

15:17:49 12 Q. OKAY. DO YOU KNOW WHAT IMPACT THIS

15:17:53 13 HAS ON WHETHER DIGITAL DOWNLOADS ARE -- ARE

15:17:55 14 APPLICABLE TO CONTROLLED COMPOSITION CLAUSES?

15:17:56 15 MR. POMERANTZ: INSTRUCTION NOT TO

15:17:59 16 ANSWER. GOES BEYOND WHAT WE'RE DESIGNATING HIM

15:18:21 17 ABOUT.

15:18:22 18 MR. BUSCH: I HAVE A SECTION HERE

15:18:28 19 IN MY EXAMINATION THAT DEALS WITH THE QUESTIONS

15:18:36 20 REGARDING THE REQUIREMENT TO GET LICENSES WHEN A

15:18:39 21 MASTER RECORDING IS LICENSED TO A THIRD PARTY

15:18:43 22 COMPILATION AND HOW THAT IMPACTS -- WOULDN'T THE

15:18:47 23 SAME ANALYSIS APPLY WITH RESPECT TO DIGITAL

15:18:48 24 DOWNLOAD PROVIDERS.

25 AND I ASSUME THAT YOU'RE NOT GOING

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15:18:51 1 TO LET ME ASK THOSE QUESTIONS?

15:18:52 2 MR. POMERANTZ: CORRECT. WE'RE NOT
15:18:55 3 DESIGNATING HIM AS AN EXPERT WITNESS ON THAT
15:18:55 4 SUBJECT MATTER.

15:18:56 5 MR. BUSCH: SO ANY QUESTIONS THAT I
15:18:58 6 WOULD HAVE THAT RELATED TO AFFILIATED OR
15:19:01 7 UNAFFILIATED LICENSEES AND ANY COMPARISON BETWEEN
15:19:07 8 AN ITUNES TO A, FOR EXAMPLE, THIRD-PARTY LICENSEE
15:19:11 9 OF A MASTER RECORDING FOR PURPOSES OF RELEASING
15:19:14 10 COMPILATION ALBUMS, HE'S NOT BEING DESIGNATED AND
15:19:15 11 YOU WOULD INSTRUCT HIM NOT TO ANSWER?

15:19:17 12 MR. POMERANTZ: CORRECT.

15:19:22 13 MR. BUSCH: OKAY.

15:19:22 14 BY MR. BUSCH:

15:19:24 15 Q. HAVE YOU EVER REPRESENTED A MUSIC
15:19:27 16 PUBLISHER IN THE NEGOTIATION OF A LICENSE WITH A
15:19:30 17 COMPANY RELEASING A COMPILATION ALBUM?

15:19:36 18 A. WELL, I REPRESENT THE PUBLISHING
15:19:42 19 COMPANY AFFILIATES OF A NUMBER OF ARTISTS,
15:19:47 20 "OFFSPRING," "METALLICA," THEY OWN THEIR OWN
15:19:51 21 PUBLISHING. SO OUR FIRM DEFINITELY HAS DONE THAT.
15:19:53 22 AND I PROBABLY HAVE, TOO, BUT NOT RECENTLY.

15:19:55 23 Q. OKAY. AND DO YOU KNOW WHETHER
15:19:58 24 THOSE ARTISTS WERE SUBJECT TO A CONTROLLED
25 COMPOSITION CLAUSE WITH ANOTHER RECORD LABEL BUT

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15:20:04 1 NONETHELESS WERE CONTACTED BY THE THIRD PARTY
15:20:07 2 RELEASING A COMPILATION ALBUM TO GET A MECHANICAL
15:20:08 3 LICENSE FROM YOU OR FROM YOUR ARTIST?
15:20:10 4 A. THAT HAPPENS SOMETIMES.
15:20:21 5 Q. DO YOU HAVE AN OPINION ON WHETHER
15:20:24 6 THE -- ON WHETHER THE CONTROLLED COMPOSITION
15:20:28 7 CLAUSE APPLIES TO SUCH RELEASES BY UNAFFILIATED
15:20:31 8 THIRD PARTIES LIKE A LICENSEE WHO IS RELEASING A
15:20:34 9 COMPILATION ALBUM WHERE THEY'VE LICENSED THE
15:20:35 10 MASTER FROM THE RECORD LABEL?
15:20:38 11 A. THIS CONTROLLED COMPOSITION CLAUSE
15:20:39 12 OR IN GENERAL?
15:20:41 13 Q. IN GENERAL.
15:20:48 14 A. IN GENERAL, MOST CONTROLLED
15:20:50 15 COMPOSITION CLAUSES PURPORT TO ACQUIRE THOSE
15:20:54 16 RIGHTS. THEY -- MOST OF THEM ATTEMPT TO ACQUIRE
15:20:57 17 THE RIGHTS TO BE ABLE TO SUBLICENSE TO THIRD
15:20:58 18 PARTIES.
15:20:59 19 Q. DOES THIS ONE?
15:21:01 20 A. I THINK SO, YES.
15:21:04 21 Q. SO YOUR TESTIMONY IS THAT -- SO HE
15:21:06 22 IS GOING TO TESTIFY ABOUT THE AFFILIATED LICENSEE?
15:21:07 23 MR. POMERANTZ: NO, I DON'T. I WAS
15:21:10 24 WONDERING WHERE YOU WERE GOING, BUT THAT IS NOT A
25 SUBJECT WE WOULD INTEND TO HAVE HIM OFFER EXPERT

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15:21:14 1 TESTIMONY IN. AND SO, NO.

15:21:16 2 I REALIZE YOU DON'T LIKE HIS
15:21:20 3 OPINION, BUT THAT'S NOT A SUBJECT THAT WE ARE
15:21:23 4 INTENDING TO OFFER EXPERT TESTIMONY FROM
15:21:23 5 MR. PATERNO.

15:21:24 6 MR. BUSCH: BECAUSE YOU HAD
15:21:25 7 INSTRUCTED HIM NOT TO --

15:21:26 8 MR. POMERANTZ: I WAS TRYING TO
15:21:28 9 LISTEN TO YOUR QUESTIONS AND SEE IF IT WAS GOING
15:21:29 10 TO ONE OF THE THREE SUBJECT MATTERS THAT WE HAD
15:21:32 11 DESIGNATED HIM ON, AND I DON'T SEE THAT.

15:21:35 12 SO NO, I DON'T THINK WE WOULD
15:21:38 13 INTEND TO OFFER HIM AS AN EXPERT ON THOSE
15:21:47 14 SUBJECTS.

15:21:47 15 BY MR. BUSCH:

15:21:48 16 Q. OKAY. WELL, NOW THAT YOU'VE
15:21:50 17 ANSWERED THE QUESTION, DO YOU KNOW WHY THE THIRD
15:21:52 18 PARTY RECORD LABELS, THIRD-PARTY LICENSEES WHO
15:21:55 19 WERE RELEASING COMPILATION ALBUMS WOULD HAVE
15:21:59 20 CONTACTED YOU OR YOUR ARTIST FOR A MECHANICAL
15:22:03 21 LICENSE IF THE COMPOSITION WAS COVERED BY THE
15:22:06 22 CONTROLLED COMPOSITION CLAUSE FOR WHICH THEY
15:22:06 23 RECEIVED THE LICENSE?

15:22:07 24 MR. POMERANTZ: I'M GOING TO
25 INSTRUCT HIM NOT TO ANSWER.

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15:30:17 1 SO IT NEVER COMES TO THIS.

15:30:28 2 Q. OKAY.

15:30:30 3 A. AND AGAIN, I DON'T WANT TO GET TOO
15:30:33 4 FAR AFIELD, BUT I CERTAINLY HAVE TAKEN THE
15:30:35 5 POSITION THAT THIS PERSON CLAIMS IS AT ODDS WITH
15:30:39 6 INDUSTRY PRACTICE ON, YOU KNOW, NOT EVERY DAY, BUT
15:30:40 7 IT COMES UP.

15:30:42 8 AND WE HAVE, ON BEHALF OF OTHER
15:30:46 9 HOLDERS OF COPYRIGHTS, LICENSED THEIR INTERESTS IN
15:30:49 10 THE COPYRIGHT WHEN THEY WEREN'T BEING COOPERATIVE.

15:30:51 11 Q. WHO?

15:30:54 12 A. I DON'T -- YOU KNOW, AGAIN, I DON'T
15:30:56 13 REMEMBER. IT CAME UP LAST WEEK, AND I CAN'T FOR
15:30:58 14 THE LIFE OF ME TELL YOU WHO IT WAS.

15:31:15 15 Q. IS IT FAIR TO SAY THAT LICENSES ARE
15:31:19 16 NARROWLY CONSTRUED TO CONFORM TO THE LANGUAGE IN
15:31:19 17 THE LICENSE?

15:31:20 18 MR. POMERANTZ: WHAT ARE YOU
15:31:22 19 TALKING ABOUT? WHAT KIND OF LICENSE? WHAT
15:31:24 20 CONTEXT? HOW DOES IT RELATE TO HIS OPINIONS?
15:31:25 21 BY MR. BUSCH:

15:31:26 22 Q. WOULD IT BE FAIR TO SAY THAT A
15:31:29 23 LICENSE TO USE A COMPOSITION FOR A CERTAIN PURPOSE
15:31:33 24 IS NARROWLY CONSTRUED TO ONLY GRANT A LICENSE FOR
25 THAT PURPOSE IDENTIFIED WITHIN THE LICENSE?

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15:31:36 1 MR. POMERANTZ: I'M GOING TO
15:31:39 2 INSTRUCT HIM NOT TO ANSWER UNLESS YOU CAN EXPLAIN
15:31:42 3 TO ME HOW THAT RELATES TO ONE OF THE THREE
15:31:51 4 OPINIONS THAT WE ARE INTENDING TO OFFER HIM ON.
15:31:58 5 BY MR. BUSCH:

15:32:02 6 Q. LET'S GET MR. ABRAMS' REPORT IN
15:32:15 7 FRONT OF YOU. AND AM I RIGHT, THERE IS ONLY ONE?

15:32:17 8 MR. POMERANTZ: YEAH. IT'S THE
15:32:19 9 SENTENCE THAT BEGINS ON THE TOP OF PAGE 3 THAT
15:32:21 10 STARTS WITH THE WORD "INITIALLY." I THINK IT'S
15:32:27 11 ACTUALLY TWO SENTENCES, BUT IT'S CLAUSES A AND B.

15:32:29 12 I DON'T KNOW IF YOU'VE GIVEN US
15:32:29 13 THIS REPORT YET.

15:32:33 14 MR. BUSCH: I DID. DID I GIVE YOU
15:32:34 15 ABRAMS?

15:32:35 16 THE DEPONENT: I DON'T THINK I HAVE
15:32:35 17 IT.

15:32:37 18 MR. BUSCH: LET ME GIVE IT TO YOU,
15:32:55 19 THEN.

15:32:57 20 MR. POMERANTZ: I'LL GIVE HIM MY
15:32:58 21 COPY.

15:33:01 22 MR. BUSCH: AND SAME POINT HERE,
15:33:02 23 WHICH IS THAT YOU'RE ONLY GOING TO LET HIM ANSWER
15:33:04 24 QUESTIONS THAT RELATE TO THIS -- WITH RESPECT TO
25 THIS PARTICULAR?

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15:36:02 1 Q. I MEAN, YOU SAID THERE ARE TERMS,
15:36:05 2 CONDITIONS THAT ARE NOT FOUND WITHIN THIS --
15:36:09 3 WITHIN THE SHORT-FORM AGREEMENT THAT ARE GENERALLY
15:36:10 4 FOUND IN LICENSES.

15:36:12 5 I IDENTIFIED TWO, AUDIT RIGHTS AND
15:36:14 6 ACCOUNTING RIGHTS. ARE THERE ANY OTHER RIGHTS
15:36:15 7 THAT YOU CAN THINK OF?

15:36:18 8 A. TIME OF PAYMENT, FREQUENCY OF
15:36:24 9 PAYMENT, OFF THE TOP OF MY HEAD. I MEAN, I COULD
15:36:28 10 LOOK AT A LICENSE AND TELL YOU WHAT'S NOT IN HERE
15:36:29 11 THAT'S IN A LICENSE. THEY'RE ALL PRETTY MUCH
15:36:30 12 IMMATERIAL.

15:36:31 13 Q. ANYTHING -- DO YOU KNOW WHETHER
15:36:34 14 IT'S IMMATERIAL TO EVERYONE HAVING AUDIT RIGHTS OR
15:36:36 15 ACCOUNTING RIGHTS OR WHEN THEY'RE BEING PAID AND
15:36:37 16 HOW THEY'RE BEING PAID?

15:36:40 17 A. IT'S IMMATERIAL TO RATIONAL PEOPLE.
15:36:43 18 THEY'RE ALL PAID WITHIN 90 DAYS. THERE IS TYPICAL
15:36:45 19 ACCOUNTING RIGHTS. IT'S NOT -- THESE ARE NOT BIG
15:36:46 20 ISSUES.

15:36:55 21 Q. DO YOU KNOW WHETHER THERE ARE
15:36:57 22 SPECIFIC TERMS FOUND IN DIGITAL DOWNLOAD LICENSES
15:37:02 23 THAT ARE NOT FOUND WITHIN THE MECHANICAL ROYALTY
15:37:02 24 SECTION?

25 A. SEPARATE DIGITAL DOWNLOAD LICENSES?

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15:37:08 1 Q. YES, SIR.

15:37:09 2 A. I DON'T KNOW. I HAVE NEVER LOOKED

15:37:11 3 AT A SEPARATE DIGITAL DOWNLOAD LICENSE.

15:37:26 4 Q. OKAY. DO YOU KNOW PERSONALLY THE

15:37:28 5 NAME OF LEO FERANTE?

15:37:28 6 A. NO.

15:37:30 7 Q. OKAY. DO YOU KNOW -- DO YOU KNOW

15:37:34 8 WHETHER WHAT MR. -- WHETHER WHAT IS REPRESENTED

15:37:38 9 HERE AS BEING THE TESTIMONY OF LEO FERANTE IS

15:37:38 10 CORRECT?

15:37:40 11 A. HOW WOULD I KNOW THAT?

15:37:44 12 Q. IN OTHER WORDS, YOU DON'T KNOW

15:37:48 13 WHETHER UNIVERSAL HAS A -- HAS A PRACTICE OF

15:37:51 14 SENDING SEPARATE LICENSE AND LICENSE REQUEST

15:37:59 15 LETTERS INSTEAD OF ADVICE LETTERS WHEN CONTROLLED

15:38:01 16 COMPOSITION LANGUAGE IS AMBIGUOUS?

15:38:04 17 A. THAT'S NOT WHAT YOU ASKED. YOU

15:38:06 18 ASKED ME IF THIS WAS THE TESTIMONY OF LEO

15:38:07 19 FERRANTE.

15:38:08 20 Q. NO, NO. WHAT I ASKED YOU WAS

15:38:09 21 DOESN'T MATTER.

15:38:10 22 WHAT I MEANT TO ASK YOU, BUT I

15:38:12 23 DIDN'T ASK IT CLEARLY ENOUGH WAS: DO YOU KNOW

15:38:15 24 WHETHER IT WAS REPRESENTED TO BE THE TESTIMONY OF

25 MR. FERANTE?

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15:38:16 1 A. IS THERE A PRACTICE?

15:38:17 2 Q. IS THERE A PRACTICE.

15:38:19 3 MR. POMERANTZ: OBJECTION; LACK OF

15:38:19 4 FOUNDATION.

15:38:20 5 THE DEPONENT: I BELIEVE THAT TO BE

15:38:21 6 THEIR PRACTICE.

15:38:21 7 BY MR. BUSCH:

15:38:22 8 Q. OKAY. AND HOW DO YOU KNOW THAT?

15:38:24 9 A. I DON'T KNOW FOR CERTAIN.

15:38:26 10 Q. WHAT IS YOUR BELIEF BASED UPON?

15:38:29 11 A. I'VE BEEN DOING THIS A LONG TIME,

15:38:32 12 AND IT'S MY UNDERSTANDING THAT'S HOW IT WORKS. I

15:38:36 13 HAVEN'T ISSUED, RECEIVED, REVIEWED OR LOOKED AT A

15:38:38 14 MECHANICAL LICENSE IN A REALLY LONG TIME.

15:38:41 15 Q. OKAY. AND YOU WORK WITH UNIVERSAL;

15:38:43 16 IS THAT CORRECT?

15:38:44 17 MR. POMERANTZ: WHAT DO YOU MEAN

15:38:44 18 "WORK WITH"?

15:38:45 19 BY MR. BUSCH:

15:38:48 20 Q. YOU HAVE CAUSE TO WORK WITH

15:38:51 21 UNIVERSAL LAWYERS AND ATTORNEYS IN THE UNIVERSAL

15:38:52 22 MUSIC DEPARTMENT?

15:38:55 23 A. GENERALLY, YES, ON THE OPPOSITE

15:38:57 24 SIDE OF THEM, YES. WE NEGOTIATE WITH THEM.

25 Q. YOU'RE ALSO ON THEIR SIDE IN

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15:46:32 1 ME ANYTHING ABOUT B. YOU JUST ASKED ME TO READ A.

15:46:34 2 DO YOU WANT ME TO READ B AND DO YOU

15:46:35 3 HAVE A QUESTION ABOUT B?

15:46:35 4 BY MR. BUSCH:

15:46:35 5 Q. I SURE DO.

15:46:36 6 IT SAYS:

15:46:36 7 "AS A RESULT, THIS LANGUAGE

15:46:38 8 CLEARLY CONTEMPLATES THE SIGNING OF

15:46:39 9 A SEPARATE LICENSE THAT PRESUMABLY

15:46:41 10 CONTAINS THE TERMS GENERALLY FOUND

15:46:43 11 WITHIN MECHANICAL LICENSES."

15:46:44 12 WHAT IS YOUR BASIS FOR EITHER

15:46:46 13 AGREEING OR DISAGREEING WITH THAT?

15:46:47 14 A. I DON'T THINK IT CLEARLY

15:46:49 15 CONTEMPLATES ANYTHING OF THE SORT.

15:46:51 16 Q. YOU DON'T THINK THE LANGUAGE WILL

15:46:53 17 BE -- CONTEMPLATES THE SIGNING OF A FUTURE

15:46:53 18 LICENSE?

15:46:55 19 A. NOT IN THE CONTEXT OF -- NOT IN THE

15:46:58 20 CONTEXT OF WHERE I PRACTICE AND THE OTHER

15:46:59 21 PRACTITIONERS IN MY AREA.

15:47:01 22 Q. AND YOU'VE TESTIFIED THAT YOU'VE

15:47:04 23 NEVER DISCUSSED THE ISSUE OF THE "WILL BE" VERSUS

15:47:06 24 "HEREBY" WITH ANYONE, OTHER THAN YOU SAID YOU

25 SPOKE TO SOMEONE THE OTHER DAY WHO YOU CAN'T

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15:47:11 1 REMEMBER WHO IT WAS WHO SAID IT WAS RIDICULOUS?

15:47:14 2 A. I SPOKE TO SOMEBODY AROUND THE TIME
15:47:18 3 OF MY LAST DEPOSITION, AND WE WERE DISCUSSING IT.

15:47:23 4 AND WE AGREED THAT THE POSITION IS, AGAIN, ABSURD
15:47:26 5 GIVEN WHAT WE DO IN OUR DAILY BUSINESS LIVES.

15:47:28 6 Q. AND YOU DON'T REMEMBER WHO THAT IS?

15:47:28 7 A. NO.

15:47:30 8 Q. AND THAT WAS THE ONLY TIME YOU
15:47:33 9 RECALL DISCUSSING THE DIFFERENCE BETWEEN "WILL BE"
15:47:36 10 VERSUS "IS HEREBY" AND ANY EFFECT THAT MIGHT HAVE?

15:47:37 11 A. WELL, I TOLD YOU I DISCUSSED IT
15:47:38 12 WITH THESE PEOPLE.

15:47:39 13 Q. MR. POMERANTZ?

15:47:39 14 A. YES.

15:47:41 15 Q. OKAY. OTHER THAN MR. POMERANTZ IN
15:47:43 16 CONNECTION WITH THIS CASE, YOU DON'T RECALL EVER
15:47:45 17 DISCUSSING IT JUST IN A NORMAL COURSE OF YOUR
15:47:46 18 PRACTICE?

15:47:48 19 A. YEAH. I TOLD YOU, AT THE TIME
15:47:49 20 AROUND THE LAST DEPOSITION.

15:47:51 21 Q. WITH THAT -- OTHER THAN THAT.

15:47:53 22 A. IT MIGHT HAVE BEEN TWO TIMES AROUND
15:47:55 23 THE LAST DEPOSITION WITH OTHER LAWYERS. BUT, NO.
15:47:58 24 OTHER THAN THAT, I DON'T SPEND A LOT OF TIME
25 DIFFERENTIATING BETWEEN "WILL," "IS" AND "HEREBY."

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15:48:05 1 Q. SO AS TO A AND B, DO YOU HAVE ANY
15:48:07 2 OTHER BASES FOR DISAGREEING WITH THOSE SENTENCES
15:48:09 3 OTHER THAN WHAT WE'VE TALKED ABOUT?

15:48:23 4 A. NO. I THINK I TESTIFIED THAT THIS
15:48:28 5 IS NOT -- THAT THIS PART OF THE REPORT DOES NOT
15:48:31 6 REFLECT THE CUSTOM AND PRACTICE IN THE MUSIC
15:48:33 7 INDUSTRY WHICH IS THE BASIS ON WHICH I OBJECT TO
15:48:33 8 WHAT HE SAYS.

15:48:35 9 Q. HOW MANY OTHER CONTROLLED
15:48:37 10 COMPOSITION CLAUSES OR MECHANICAL ROYALTIES
15:48:41 11 PROVISIONS HAVE YOU SEEN THAT HAS THE "WILL"
15:48:43 12 LICENSE VERSUS "IS HEREBY" OTHER THAN THIS
15:48:44 13 AGREEMENT?

15:48:44 14 MR. POMERANTZ: OBJECTION TO THE
15:48:47 15 FORM OF THE QUESTION. MISSTATES THE DOCUMENT.

15:48:48 16 MR. BUSCH: GO AHEAD.

15:48:49 17 THE DEPONENT: I STILL HAVE NO
15:48:49 18 IDEA.

15:48:50 19 BY MR. BUSCH:

15:48:51 20 Q. HAVE YOU EVER SEEN ONE THAT SAID,
15:48:54 21 "WILL BE LICENSED" VERSUS "IS HEREBY" OTHER THAN
15:48:54 22 THIS AGREEMENT?

15:48:57 23 A. I'M SURE I HAVE, BUT I COULDN'T
15:49:00 24 TELL YOU WHERE OR WHEN OR HOW.

25 Q. OKAY. ALL RIGHT. DO YOU HAVE ANY