

EXHIBIT C
to

DECLARATION OF MARC GUILFORD

DEPOSITION OF RAND HOFFMAN

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UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F.B.T. PRODUCTIONS, LLC,)
AND EM2M, LLC,)
)
PLAINTIFFS,) CASE NO.
) CV 07-3314 PSG
VS.) (MANX)
)
AFTERMATH RECORDS DOING)
BUSINESS AS AFTERMATH)
ENTERTAINMENT; INTERSCOPE)
RECORDS; UMG RECORDINGS,)
INC.; AND ARY, INC.,)
)
DEFENDANTS.)
_____)

30(B)(6) DEPOSITION OF RAND HOFFMAN,
TAKEN ON BEHALF OF THE PLAINTIFFS,
AT 10250 CONSTELLATION BOULEVARD,
19TH FLOOR, LOS ANGELES, CALIFORNIA,
COMMENCING AT 10:39 A.M., THURSDAY,
MAY 22, 2008, BEFORE RENEE A.
PACHECO, RPR, CSR NUMBER 11564.

DEPOSITION OF RAND HOFFMAN

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10:54:36 1 BACKGROUND, COLLEGE, LAW SCHOOL, AND THEN YOUR
10:54:38 2 WORK EXPERIENCE, PLEASE.

10:54:44 3 A. I WENT TO COLUMBIA COLLEGE; I WAS
10:54:48 4 GRADUATED IN 1975. I WENT TO HARVARD LAW SCHOOL;
10:54:51 5 I WAS GRADUATED IN 1978.

10:54:55 6 I SPENT A YEAR CLERKING FOR THE
10:54:59 7 TRIAL COURT LEVEL IN MASSACHUSETTS -- THE STATE
10:55:04 8 TRIAL COURT LEVEL IN MASSACHUSETTS.

10:55:09 9 I TOOK A JOB AT THE LAW FIRM OF
10:55:13 10 DONOVAN, LEISURE, NEWTON & IRVINE, IN MANHATTAN;
10:55:18 11 WORKED THERE FOR ABOUT 15 MONTHS.

10:55:20 12 AND IN MARCH OF 1981 I STARTED
10:55:22 13 WORKING AT C.B.S. RECORDS.

10:55:26 14 Q. OKAY.

10:55:30 15 A. I WAS AT C.B.S. RECORDS IN THE LAW
10:55:36 16 DEPARTMENT AND IN THE BUSINESS AFFAIRS DEPARTMENT
10:55:44 17 TILL SOMETIME IN 1985. THEN I MOVED TO THE MUSIC
10:55:48 18 PUBLISHING DIVISION, I BELIEVE, IN 1985. IN
10:55:55 19 EITHER 1986 OR 1987, C.B.S. SOLD ITS MUSIC
10:56:00 20 PUBLISHING DIVISION, AND I WENT BACK TO C.B.S.
10:56:04 21 RECORDS IN THE LAW DEPARTMENT FOR A FEW MONTHS.

10:56:08 22 IN 1987, I WENT TO B.M.G. MUSIC, IN
10:56:10 23 THE BUSINESS AND LEGAL AFFAIRS DEPARTMENT. I
24 THINK I WAS A VICE PRESIDENT.

25 IN 1989, I WENT TO POLYGRAM RECORDS

DEPOSITION OF RAND HOFFMAN

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10:56:28 1 AS SENIOR VICE PRESIDENT OF BUSINESS AFFAIRS. IN
10:56:32 2 1998, SEAGRAM, WHICH OWNED UNIVERSAL MUSIC, BOUGHT
10:56:38 3 POLYGRAM AND OFFERED ME A POSITION AS HEAD OF
10:56:41 4 BUSINESS AND LEGAL AFFAIRS FOR INTERSCOPE, GEFFEN,
10:56:48 5 A & M RECORDS. AND I STARTED THAT POSITION IN THE
10:56:50 6 BEGINNING OF 1999.

10:56:50 7 Q. AND HAVE YOU BEEN IN THAT POSITION
10:56:51 8 EVER SINCE?

10:56:54 9 A. I HAVE.

10:56:54 10 Q. AND SO YOUR CURRENT TITLE IS WHAT?
10:56:55 11 EXCUSE ME.

10:56:59 12 A. HEAD OF BUSINESS AND LEGAL AFFAIRS
10:57:03 13 FOR INTERSCOPE, GEFFEN, A & M RECORDS.

10:57:09 14 Q. AND WHAT ARE YOUR DUTIES AND
10:57:11 15 RESPONSIBILITIES IN THAT POSITION?

10:57:22 16 A. I SUPERVISE THE BUSINESS AND LEGAL
10:57:29 17 AFFAIRS, THE PROCESS OF SIGNING ARTISTS, SIGNING
10:57:34 18 LABELS, PUTTING TOGETHER BUSINESS STRATEGIES,
10:57:38 19 ACQUIRING RIGHTS, EXPLOITING RIGHTS, ALL FROM THE
10:57:39 20 BUSINESS LEGAL PERSPECTIVE, NOT FROM THE CREATIVE
10:57:41 21 OR MARKETING PERSPECTIVE.

10:57:47 22 Q. I UNDERSTAND. WHEN THERE IS A
10:57:50 23 QUESTION ABOUT A COURSE OF ACTION TO TAKE, AND IT
24 INVOLVED LEGAL ISSUES, IS THAT SOMETHING THAT YOUR
25 DEPARTMENT HANDLES FOR THE INTERSCOPE DIVISION OF

DEPOSITION OF RAND HOFFMAN

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11:05:43 1 MUSIC GROUP STAFF. I'M PART OF THE INTERSCOPE,
11:05:44 2 GEFLEN, A & M STAFF.

11:05:45 3 Q. SO THERE'S A SEPARATION?

11:05:49 4 A. THERE'S A SEPARATION.

11:05:55 5 Q. OKAY. ALL RIGHT. SINCE YOU BEGAN
11:05:58 6 WITH INTERSCOPE IN 1999, AM I CORRECT THAT YOU DO
11:06:01 7 NOT HAVE ANY ROLE IN THE NEGOTIATION OF THE
11:06:01 8 ORIGINAL F.B.T.-AFTERMATH AGREEMENT IN 1998?

11:06:08 9 A. CORRECT.

11:06:11 10 Q. IN 1999, WHEN YOU JOINED
11:06:19 11 INTERSCOPE, WHO WAS ON YOUR STAFF?

11:06:26 12 A. THE STAFF WAS BUILT FROM SCRATCH
11:06:30 13 DURING THE FIRST HALF OF 1999, AS WE CREATED A NEW
11:06:33 14 BUSINESS UNIT, BY COMBINING INTERSCOPE -- THE
11:06:33 15 PREEXISTING INTERSCOPE RECORDS, GEFLEN RECORDS,
11:06:35 16 AND A & M RECORDS.

11:06:36 17 Q. DO YOU KNOW A PERSON BY THE NAME OF
11:06:37 18 ZACH HOROWITZ?

11:06:38 19 A. YES.

11:06:41 20 Q. WHO IS ZACH HOROWITZ?

11:06:44 21 A. I BELIEVE HIS TITLE IS CHIEF
11:06:46 22 OPERATING OFFICER OF UNIVERSAL MUSIC GROUP, BUT
11:06:47 23 I'M NOT CERTAIN OF HIS EXACT TITLE.

24 Q. DO YOU HAVE INTERACTION WITH
25 MR. HOROWITZ?

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11:37:59 1 YOU CAN ANSWER, IF YOU KNOW.

11:38:00 2 THE DEPONENT: YES.

11:38:01 3 BY MR. BUSCH:

11:38:03 4 Q. OKAY. AND WHY DID YOU -- WAS THAT
11:38:04 5 A CONSCIOUS DECISION THAT YOU MADE TO -- TO BECOME
11:38:05 6 MORE INVOLVED?

11:38:07 7 A. YES.

11:38:18 8 Q. AND WHY DID YOU MAKE THAT DECISION?

11:38:26 9 A. MY PERSONAL PHILOSOPHY WAS THAT IT
11:38:32 10 WAS APPROPRIATE THAT INTERSCOPE HAVE MORE
11:38:33 11 INVOLVEMENT IN THE AFTERMATH SIGNINGS THAN IT HAD
11:38:37 12 HAD IN THE PAST.

11:38:42 13 Q. OKAY. AND YOU WERE AWARE THAT --
11:38:46 14 WHEN YOU JOINED INTERSCOPE IN 1999, THAT THERE WAS
11:38:49 15 IN PLACE A CONTRACT BETWEEN F.B.T. AND AFTERMATH
11:38:51 16 WITH RESPECT TO THE SERVICES OF EMINEM?

11:38:53 17 A. AT SOME POINT I BECAME AWARE OF
11:38:55 18 THAT.

11:38:59 19 Q. OKAY. AND YOU ARE AWARE THAT IN
11:39:02 20 2003 A NEW AGREEMENT WAS ENTERED INTO BETWEEN
11:39:02 21 F.B.T. AND AFTERMATH; IS THAT CORRECT?

11:39:08 22 A. YES.

11:39:12 23 Q. OKAY. AND IN CONNECTION WITH THE
24 DRAFTING AND NEGOTIATION OF THE 2003 AGREEMENT,
25 WHO WAS INVOLVED IN THAT PROCESS WITH RESPECT TO

DEPOSITION OF RAND HOFFMAN

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11:39:25 1 INTERSCOPE?

11:39:37 2 A. ME AND LISA ROGELL.

11:39:39 3 Q. WAS PETER PATERNO INVOLVED IN THE
11:39:39 4 2003 AGREEMENT?

11:39:40 5 MR. POMERANTZ: IN THE
11:39:41 6 NEGOTIATIONS?

11:39:42 7 BY MR. BUSCH:

11:39:44 8 Q. IN THE NEGOTIATION OR DRAFTING OF
11:39:49 9 THE AGREEMENT.

11:39:52 10 A. NOT DIRECTLY.

11:39:57 11 Q. WHAT DO YOU MEAN BY "NOT DIRECTLY"?

11:40:03 12 A. WE HAVE A -- AS -- AS YOU KNOW,
11:40:08 13 AFTERMATH RECORDS IS A VENTURE WITH A DR. DRE
11:40:12 14 ENTITY, PETER'S CLIENT. WHEN THE VENTURE SPENDS A
11:40:14 15 SIGNIFICANT AMOUNT OF MONEY, THAT CAN AFFECT
11:40:17 16 FUTURE PROFITS.

11:40:22 17 SO WHEN WE'RE MAKING THAT KIND OF A
11:40:27 18 DEAL, WE KEEP PETER IN THE LOOP SO THAT PETER CAN
11:40:29 19 MAKE SURE THAT DRE HIMSELF IS OKAY WITH IT.

11:40:32 20 Q. OKAY. BUT AS FAR AS THE DIRECT
11:40:36 21 NEGOTIATIONS, DRAFTING OF THE AGREEMENT AND SO
11:40:37 22 FORTH, THAT WAS A LISA ROGELL, RAND HOFFMAN --

11:40:44 23 A. YES.

24 Q. OKAY. HAVE YOU EVER HEARD OF THE
25 TERM "U.S.N.R.C."?

DEPOSITION OF RAND HOFFMAN

11:45:23 1 REPLACED THIS CONTRACT?

11:45:30 2 A. YES.

11:45:33 3 Q. AS BETWEEN YOU AND MS. ROGELL, WITH
11:45:38 4 RESPECT TO THE 2003 CONTRACT, WHAT WAS THE
11:45:42 5 DIVISION OF RESPONSIBILITY?

11:45:43 6 A. SHE DID THE DRAFTING, I REVIEWED
11:45:46 7 THE DRAFTS.

11:45:49 8 Q. DID SHE HANDLE THE NEGOTIATIONS OR
11:45:51 9 THE CONVERSATIONS WITH REPRESENTATIVES OF F.B.T.
11:45:53 10 AND EMINEM?

11:45:56 11 A. THERE WERE CONVERSATIONS WE HAD
11:45:58 12 TOGETHER, THERE WERE CONVERSATIONS I HAD WITHOUT
11:46:01 13 HER, THERE WERE CONVERSATIONS SHE HAD WITHOUT ME.

11:46:03 14 Q. OKAY. IN CONNECTION THE 2003
11:46:07 15 AGREEMENT, DO YOU RECALL YOUR CONVERSATIONS WITH
11:46:08 16 REPRESENTATIVES OF EMINEM AND F.B.T. AND WHAT
11:46:17 17 ISSUES WERE DISCUSSED?

11:46:17 18 A. CAN I SEE THE 2003 AGREEMENT,
11:46:20 19 PLEASE?

11:46:20 20 Q. WOULD THAT HELP YOU TO REFRESH YOUR
11:46:22 21 MEMORY?

11:46:22 22 A. THAT WOULD HELP ME TO REFRESH MY
11:46:25 23 MEMORY.

24 Q. OKAY. WHEN WE GET TO THAT, THEN
25 I'LL JUST ASK THE QUESTIONS THEN.

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12:55:40 1 Q. DO YOU KNOW WHETHER, WITH RESPECT
12:55:42 2 TO LICENSES TO RHINO RECORDS OR TO A THIRD PARTY
12:55:46 3 SUCH AS K-TEL THAT -- WHETHER INTERSCOPE HAS THE
12:55:47 4 RIGHT TO -- TO ASSIGN THE CONTROLLED COMPOSITION
12:55:47 5 CLAUSE?

12:55:52 6 MR. POMERANTZ: OBJECTION; VAGUE,
12:55:52 7 ARGUMENTATIVE, AND IT'S ALSO AN INCOMPLETE
12:55:53 8 HYPOTHETICAL.
12:55:53 9 BY MR. BUSCH:

12:55:54 10 Q. GO AHEAD.

12:55:57 11 A. I BELIEVE THAT DEPENDS ON THE
12:55:57 12 LANGUAGE OF THE PARTICULAR CONTROLLED COMPOSITION
12:55:59 13 CLAUSE.

12:56:01 14 Q. WHAT LANGUAGE WOULD BE -- WOULD YOU
12:56:01 15 LOOK FOR TO MAKE THAT DETERMINATION?

12:56:04 16 MR. POMERANTZ: OBJECTION; IT'S AN
12:56:05 17 INCOMPLETE HYPOTHETICAL, IT'S OUT OF CONTEXT.

12:56:11 18 THE DEPONENT: I WOULD READ THE
12:56:14 19 CONTROLLED COMPOSITION CLAUSE IN ITS ENTIRETY AND,
12:56:14 20 YOU KNOW, WOULD BASE MY CONCLUSION ON THAT.

12:56:37 21 BY MR. BUSCH:

12:56:47 22 Q. ALL RIGHT. WELL -- OKAY. SO LOOK
12:56:49 23 AT PARAGRAPH 6 OF -- OF THE 1998 AGREEMENT BETWEEN
24 F.B.T. AND AFTERMATH.

25 AND TELL ME IF THERE'S ANY LANGUAGE

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12:56:58 1 IN PARAGRAPH 6 UNDER WHICH AFTERMATH OR INTERSCOPE
12:57:00 2 WOULD HAVE THE RIGHT TO ASSIGN THE CONTROLLED
12:57:00 3 COMPOSITIONS CLAUSE?

12:57:05 4 MR. POMERANTZ: OBJECTION TO THE
12:57:23 5 EXTENT THAT THE WORD "ASSIGN" IS VAGUE AND
12:57:24 6 AMBIGUOUS AND -- AND REQUIRES A DEFINITION.

12:57:26 7 THE DEPONENT: I HAVEN'T READ THE
12:57:28 8 WHOLE THING, BUT THE FIRST SENTENCE SEEMS TO SAY
12:57:32 9 THAT "ALL CONTROLLED COMPOSITIONS WILL BE LICENSED
12:57:35 10 TO AFTERMATH AND ITS DISTRIBUTORS/LICENSEES,"
12:57:36 11 WHICH SUGGESTS TO ME THAT IT APPLIES TO LICENSEES.
12:58:01 12 BY MR. BUSCH:

12:58:07 13 Q. COULD YOU LOOK AT PARAGRAPH -- LOOK
12:58:08 14 AT PARAGRAPH 20, ASSIGNMENT.

12:58:09 15 A. YES.

12:58:10 16 Q. AND DO YOU SEE THAT IT SAYS:

12:58:11 17 "AFTERMATH MAY ASSIGN THIS
12:58:13 18 AGREEMENT TO ANY PARENT,
12:58:16 19 SUBSIDIARY, OR AFFILIATE OF OURS,
12:58:16 20 TO ANY PERSON OR ENTITY ACQUIRING
12:58:18 21 OR ALL OR A SUBSTANTIAL PORTION
12:58:19 22 OF OUR ASSETS OR TO ANY ENTITY
12:58:21 23 WITH WHICH WE MERGE. YOU MAY NOT
24 ASSIGN THIS," SO FORTH AND SO ON?

25 A. YES.

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12:59:14 1 SINCE IT'S ALREADY LICENSED, IT
12:59:19 2 DOESN'T NEED TO BE ASSIGNED. SO I DO NOT BELIEVE
12:59:21 3 THE ASSIGNMENT PROVISIONS OF PARAGRAPH 20 ARE
12:59:22 4 NECESSARILY APPLICABLE.

12:59:25 5 Q. DO YOU REMEMBER MY QUESTION OF YOU
12:59:27 6 A FEW MOMENTS AGO, WHERE I ASKED YOU IF TYPICALLY
12:59:30 7 THE CONTROLLED COMPOSITION CLAUSES THAT YOU DEAL
12:59:31 8 WITH HAS LANGUAGE THAT SAYS "IS HEREBY LICENSED"?

12:59:32 9 A. YES.

12:59:33 10 Q. AND YOU SAID, "TYPICALLY, YES,"
12:59:35 11 THAT'S WHAT YOU DEAL WITH?

12:59:35 12 A. I SAID THAT OUR FORM CERTAINLY HAS
12:59:37 13 THAT.

12:59:39 14 Q. OKAY. NOW, DO YOU SEE A DIFFERENCE
12:59:40 15 BETWEEN "WILL BE LICENSED" VERSUS "HERE" -- "IS
12:59:42 16 HEREBY LICENSED"?

12:59:45 17 A. NO. I THINK "WILL BE LICENSED" --
12:59:48 18 CONTROLLED COMPOSITION CLAUSES MIGHT SAY "HEREBY
12:59:55 19 LICENSED," MIGHT SAY "WILL BE LICENSED," OR MIGHT
12:59:57 20 SAY THAT "YOU WILL CAUSE THE PUBLISHER TO GRANT A
12:59:58 21 LICENSE." "WILL BE LICENSED" IS JUST A WAY OF
12:59:59 22 DRAFTING.

13:00:00 23 JUST LIKE HIGHER UP ON THE PAGE IT
24 SAYS:

25 "THE ROYALTY PAYABLE FOR NEW

DEPOSITION OF RAND HOFFMAN

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13:00:55 1 AFTERMATH ENTERS INTO A LICENSE, IT CAN EITHER
13:00:58 2 MAKE AVAILABLE THIS LICENSE, BECAUSE IT'S THERE OR
13:01:02 3 IT CAN CHOOSE TO SAY TO ITS LICENSEE, NO, THIS IS
13:01:04 4 NOT AVAILABLE, GO OUT AND DEAL WITH THE PUBLISHER
13:01:04 5 YOURSELF.

13:01:07 6 BY MR. BUSCH:

13:01:08 7 Q. SO WERE YOU INVOLVED IN THE
13:01:09 8 DRAFTING OF THIS LANGUAGE, OF THIS CONTROLLED
13:01:10 9 COMPOSITION CLAUSE?

13:01:12 10 A. NO.

13:01:15 11 Q. DID YOU EVER -- DID YOU EVER SPEAK
13:01:18 12 TO ANY OF THE PARTIES ABOUT WHAT WAS MEANT BY THE
13:01:21 13 "WILL BE LICENSED TO AFTERMATH AND ITS
13:01:23 14 DISTRIBUTORS/LICENSEES" LANGUAGE?

13:01:26 15 MR. POMERANTZ: BY "PARTIES," YOU
13:01:28 16 MEAN EITHER THE F.B.T. OR EMINEM PARTIES?

13:01:29 17 MR. BUSCH: YES. OR MR. PATERNO.

13:01:32 18 MR. POMERANTZ: WELL, I'M GOING TO
13:01:33 19 INSTRUCT HIM NOT TO ANSWER MR. PATERNO TO THE
13:01:33 20 EXTENT IT'S PRIVILEGED.

13:01:34 21 THE DEPONENT: I DON'T RECALL.

13:01:36 22 BY MR. BUSCH:

13:01:39 23 Q. OKAY. AND SO YOU DON'T KNOW WHAT
24 THE INTENT OF THE PARTIES WAS WITH RESPECT TO THIS
25 LANGUAGE IN THIS AGREEMENT, DO YOU?

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13:01:59 1 A. I KNOW WHAT THE INTENT OF THE
13:02:04 2 AFTERMATH/INTERSCOPE PARTIES WAS, AND I KNOW WHAT
13:02:06 3 THE AFTERMATH PARTIES THOUGHT THE INTENT OF THE
13:02:09 4 F.B.T. AND EMINEM PARTIES WAS.

13:02:27 5 Q. AND HOW DO YOU KNOW THAT?

13:02:27 6 A. I'VE HAD CONVERSATIONS -- I'D LIKE
13:02:31 7 TO ASK MY LAWYER WHETHER SOMETHING IS PRIVILEGED.

13:02:34 8 Q. OKAY. AND --

13:02:36 9 A. AND I'D LIKE TO DO THAT NOT IN YOUR
13:02:38 10 PRESENCE SO I CAN TELL HIM WHAT IT IS.

13:02:39 11 Q. THAT'S FINE.

13:02:39 12 THE VIDEOGRAPHER: OFF THE RECORD
13:04:27 13 AT 1:02 P.M.

13:04:27 14 (WHEREUPON, A RECESS WAS HELD
13:04:27 15 FROM 1:02 P.M. TO 1:04 P.M.)

13:04:29 16 THE VIDEOGRAPHER: BACK ON THE
13:04:29 17 RECORD AT 1:04 P.M.

13:04:31 18 THE DEPONENT: WOULD YOU MIND
13:04:31 19 EITHER READING BACK THE QUESTION OR ASKING IT
13:04:33 20 AGAIN?

13:04:33 21 MR. BUSCH: MADAM COURT REPORTER,
13:01:34 22 WOULD YOU READ BACK THE QUESTION, PLEASE.

13:01:36 23 (THE RECORD WAS READ AS FOLLOWS:

24 Q AND SO YOU DON'T KNOW
25 WHAT THE INTENT OF THE PARTIES

DEPOSITION OF RAND HOFFMAN

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13:01:49 1 WAS WITH RESPECT TO THIS LANGUAGE
13:01:51 2 IN THIS AGREEMENT, DO YOU?

13:01:56 3 A I KNOW WHAT THE INTENT
13:02:01 4 OF THE AFTERMATH/INTERSCOPE
13:02:02 5 PARTIES WAS, AND I KNOW WHAT THE
13:02:05 6 AFTERMATH PARTIES THOUGHT THE
13:02:08 7 INTENT OF THE F.B.T. AND EMINEM
13:02:08 8 PARTIES WAS.

13:04:59 9 Q AND HOW DO YOU KNOW
13:05:01 10 THAT?)

13:05:04 11 MR. POMERANTZ: AND, AGAIN, YOU
13:05:05 12 ONLY ANSWER TO THE EXTENT YOUR BASIS IS A
13:05:11 13 NONPRIVILEGED COMMUNICATION, IF YOU CAN ANSWER IT.

13:05:15 14 THE DEPONENT: I'VE LOOKED AT --
13:05:20 15 YOU KNOW, I'VE SEEN MANY CONTROLLED COMPOSITION
13:05:26 16 CLAUSES. I'VE LIVE -- I WAS GOING TO SAY LIVED
13:05:29 17 WITH. I'VE KNOWN JOEL SINCE 1999. I'VE KNOWN
13:05:32 18 MARK FOR EVEN LONGER. I'VE KNOWN PETER FOR EVEN
13:05:39 19 LONGER.

13:05:41 20 IF ANYBODY HAD INTENDED THIS CLAUSE
13:05:47 21 TO BE DIFFERENT THAN A NORMAL CONTROLLED
13:05:48 22 COMPOSITION CLAUSE, I BELIEVE THAT SOMEONE -- THAT
13:05:51 23 WOULD HAVE COME TO MY ATTENTION BEFORE THIS
24 LAWSUIT, BECAUSE WE WERE SELLING RECORDS BEFORE
25 THEN, AND IT DIDN'T.

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16:06:41 1 AGREEMENT, IF YOU COULD GET THEM BOTH IN FRONT OF
16:06:44 2 YOU, PLEASE.

16:06:51 3 IN 1998, WHEN THE -- THIS AGREEMENT
16:06:55 4 WAS ORIGINALLY ENTERED INTO, DO YOU KNOW WHETHER
16:06:59 5 PERMANENT DOWNLOADS WERE A FORM OF -- A COMMERCIAL
16:07:00 6 FORM OF REPRODUCTION?

16:07:01 7 MR. POMERANTZ: OBJECTION; VAGUE,
16:07:01 8 ARGUMENTATIVE.

16:07:02 9 BY MR. BUSCH:

16:07:04 10 Q. DO YOU KNOW WHETHER PERMANENT
16:07:05 11 DOWNLOADS WERE IN EXISTENCE AT THE TIME OF THE
16:07:21 12 1998 AGREEMENT?

16:07:23 13 A. MY RECOLLECTION IS THAT THERE -- IT
16:07:26 14 WAS TECHNOLOGICALLY POSSIBLE, AND THERE MAY HAVE
16:07:33 15 BEEN A FEW ISOLATED CASES, BUT NOBODY HAD STARTED
16:07:34 16 A BUSINESS IN 1998 OF DISTRIBUTING DOWNLOADS.

16:07:37 17 Q. DO YOU KNOW WHETHER IT WAS
16:07:40 18 CONTEMPLATED BY THE PARTIES IN 1998 THAT PERMANENT
16:07:41 19 DOWNLOADS WOULD OR WOULD NOT BE COVERED BY THE
16:07:42 20 CONTROLLED COMPOSITION CLAUSE?

16:07:44 21 A. I BELIEVE IT WAS CONTEMPLATED.

16:07:45 22 Q. AND WHAT IS YOUR BASIS FOR SAYING
16:07:47 23 "IT WAS CONTEMPLATED"?

24 A. EVERYBODY IN 1998 WAS FAMILIAR WITH
25 THE INTERNET, EVERYBODY IN 1998 KNEW THAT AT SOME

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16:07:56 1 POINT IN THE FUTURE THERE WOULD BE THAT FORM OF
16:08:00 2 EXPLOITATION.

16:08:06 3 AND THE LAWYERS INVOLVED IN THE
16:08:09 4 TRANSACTION ALL KNEW THIS WAS A NORMAL RECORD DEAL
16:08:14 5 WHERE NORMAL FORMS OF EXPLOITATION WERE INTENDED
16:08:14 6 TO BE COVERED BY THE CONTROLLED COMPOSITION
16:08:15 7 CLAUSE.

16:08:17 8 Q. DO YOU KNOW WHETHER IN 1998
16:08:18 9 PERMANENT DOWNLOADS WERE A NORMAL FORM OF
16:08:19 10 DISTRIBUTION?

16:08:21 11 A. THEY WERE NOT AT THAT TIME, BUT IT
16:08:22 12 WAS CLEAR TO EVERYBODY IN THE BUSINESS THAT THEY
16:08:23 13 WERE GOING TO BE.

16:08:25 14 Q. DO YOU KNOW WHETHER THERE WAS A
16:08:28 15 STATUTORY RATE OR A RATE OF COMPENSATION TO THE
16:08:30 16 PUBLISHERS THAT HAD BEEN AGREED TO IN 1998 FOR
16:08:32 17 PERMANENT DOWNLOADS?

16:08:33 18 MR. POMERANTZ: OBJECTION TO THE
16:08:41 19 EXTENT IT REQUIRES A LEGAL CONCLUSION.

16:08:43 20 THE DEPONENT: YES, I -- YES, THERE
16:08:45 21 HAD BEEN, BECAUSE A DIGITAL DOWNLOAD IS A
16:08:46 22 PHONORECORD AND THERE'S A STATUTORY RATE.

16:08:46 23 BY MR. BUSCH:

24 Q. AND THERE WAS AN AGREEMENT THAT --
25 IN 1998, IT'S YOUR VIEW THAT THERE WAS AN

DEPOSITION OF RAND HOFFMAN

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)

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DEPONENT'S DECLARATION

I CERTIFY UNDER PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT _____ ON _____.

(SIGNATURE OF DEPONENT)